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CUMULATIVE POCKET SUPPLEMENT

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R. DANIEL BOWEN
JEREMY P. PISCA ANDREW P. DOMAN
COMMISSIONERS

TITLES 31-32

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014

TITLE 31

COUNTIES AND COUNTY LAW

CHAPTER 1

COUNTY BOUNDARIES AND COUNTY SEATS

31-126. Gooding county. — Gooding county is described as follows: beginning at the northeast corner of section six (6), township three (3) south, range sixteen (16) east;

Eastern boundary. Thence south twenty-four (24) miles, more or less, along the section line to the southeast corner of section thirty-one (31), township six (6) south, range sixteen (16) east; thence west one (1) mile, more or less, to the northwest corner of section five (5), township seven (7) south, range sixteen (16) east; thence south along the section line, to the thread of the Snake river;

Southern boundary. Thence northwesterly along the thread of the Snake river to the west line of township six (6) south, range twelve (12) east;

Western boundary. Thence north along the west line of range twelve (12) east, to the northwest corner of township three (3) south, range twelve (12) east;

Northern boundary. Thence east along the north line of township three (3) south, to the place of beginning.

County seat — Gooding.

History.
Compiled and reen. C.L. 3:24; C.S., § 30; I.C.A., § 30-126; am. 2013, ch. 41, § 1, p. 85.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 41, substituted "thence west" for "thence east", "northwest corner" for "northeast corner", and "section five (5)" for "section four (4)" near the middle of the second paragraph.

Effective Dates.
Section 5 of S.L. 2013 declared an emergency. Approved March 12, 2013.

31-129. Jerome county. — Jerome county is described as follows: beginning at the northwest corner of section five (5), township seven (7) south, range sixteen (16) east, Boise meridian;

Northern boundary. Thence east thirteen (13) miles, more or less, to the northeast corner of section five (5), township seven (7) south, range eighteen (18) east, Boise meridian; thence south two (2) miles, more or less, to the southwest corner of section nine (9), township seven (7) south, range eighteen (18) east, Boise meridian; thence east one (1) mile, more or less, to the southeast corner of section nine (9), township seven (7) south, range eighteen (18) east, Boise meridian; thence south one (1) mile, more or less, to the southwest corner of section fifteen (15), township seven (7) south, range eighteen (18) east, Boise meridian; thence east fifteen (15) miles, more or less, to the northeast corner of section twenty-four (24), township seven (7) south, range twenty (20) east, Boise meridian; thence south three (3) miles, more or less, to the northeast corner, section one (1), township eight (8) south, range twenty (20) east, Boise meridian; thence east six (6) miles, more or less, to the northeast corner of section one (1), township eight (8) south, range twenty-one (21) east, Boise meridian;

Eastern boundary. Thence south following the range line between ranges twenty-one (21) and twenty-two (22) east, Boise meridian, to the center line of Snake river;

Southern boundary. Thence down the center line of the channel of said river, following its meanderings to a point where the same intersects the section line between sections seventeen (17) and eighteen (18) in township nine (9) south, range sixteen (16) east, Boise meridian;

Western boundary. Thence north to the place of beginning.

County seat — Jerome.

History.
1919, ch. 4, §§ 2, 4, p. 14; C.S., § 33; I.C.A., § 30-129; am. 2013, ch. 41, § 2, p. 85.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 41, inserted "section one (1)" near the end of the second paragraph.

Effective Dates.
Section 5 of S.L. 2013 declared an emergency. Approved March 12, 2013.

31-134. Lincoln county. — Lincoln county is described as follows: beginning at the northeast corner of section six (6), township three (3) south, range sixteen (16) east;

Western boundary. Thence south twenty-four (24) miles, more or less, along the section line to the southeast corner of section thirty-one (31), township six (6) south, range sixteen (16) east;

Southern boundary. Thence easterly along the township line to the northwest corner of section four (4), township seven (7) south, range eighteen (18) east; thence south along the section line to the southwest corner of section nine (9), township seven (7) south, range eighteen (18) east; thence east along the section line to the southeast corner of section nine (9), township seven (7) south, range eighteen (18) east; thence south along the section line to the southwest corner of section fifteen (15), township seven (7) south, range eighteen (18) east; thence east along the section line to the southwest corner of section eighteen (18), township seven (7) south, range twenty-one (21) east; thence south along the range line to the southwest corner of township seven (7) south, range twenty-one (21) east; thence east along the township line to the southwest corner of section thirty-four (34), township seven (7) south, range twenty-three (23) east;

Eastern boundary. Thence north along section line to the north line of township seven (7) south, range twenty-three (23) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township six (6) south, range twenty-three (23) east; thence northerly along a line which is three (3) miles west of and generally parallel to the east line of range twenty-three (23) east, north of the first standard parallel south, to the north line of township three (3) south, range twenty-three (23) east (1913, ch. 3, section 2, p. 5);

Northern boundary. Thence west along the township line between townships two (2) and three (3) south, to the place of beginning (R.C., section 23q).

County seat — Shoshone.

History.

Compiled and reen. C.L. 3:31; C.S., § 38; I.C.A., § 30-134; am. 2013, ch. 41, § 3, p. 85.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 41, deleted "thence east one (1) mile, more or less, to the northeast corner of section four (4), township seven (7) south, range sixteen (16) east; thence south along the section line to the thread of the Snake river (1913, ch. 4, section 2, p. 14)" from the end of the second paragraph; rewrote the third paragraph, which formerly read: "Southern boundary. Thence easterly following the middle of the channel of Snake river to a point where the center line of the Snake river is intersected by the west section line of section three (3), township ten (10) south, range eighteen (18) east"; and deleted "northerly along the said section line to the northwest corner of section three (3), township nine (9) south, range eighteen (18) east; thence easterly along the township line to the northwest corner of township nine (9) south, range twenty-two (22) east; thence north along the township line to the northwest corner of township eight (8) south, range twenty-two (22) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township seven (7) south, range twenty-three (23) east; thence north along section line to the north line of township seven (7) south, range twenty-three (23) east; thence easterly along the township

line to the southwest corner of section thirty-four (34), township six (6) south, range twenty-three (23) east; thence" following "Eastern boundary. Thence" at the beginning of the third paragraph.

Effective Dates.

Section 5 of S.L. 2013 declared an emergency. Approved March 12, 2013.

31-136. Minidoka county. — Minidoka county is described as follows: beginning at the point where the center line of the Snake river is intersected by the west section line of section nineteen (19), township ten (10) south, range twenty-two (22) east;

Western boundary. Thence northerly along the township line to the northwest corner of township eight (8) south, range twenty-two (22) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township seven (7) south, range twenty-three (23) east; thence north along the section line to the north line of township seven (7) south, range twenty-three (23) east; thence easterly along the township line to the southwest corner of section thirty-four (34), township six (6) south, range twenty-three (23) east; thence northerly along a line which is three (3) miles west of and generally parallel to the east line of range twenty-three (23) east, north of the first standard parallel south, to the north line of township three (3) south, range twenty-three (23) east;

Northern boundary. Thence easterly along said township line (1913, ch. 3, section 2, pp. 5, 6) to the intersection of the same with the line between ranges twenty-five (25) and twenty-six (26) east; thence south along the said range line (R.C., section 23e), to its intersection with the center line of Snake river; thence southwesterly along said center line of Snake river, to the point of beginning (1913, ch. 3, section 2, p. 6).

County seat — Rupert.

History.

Compiled and reen. C.L. 3:33; C.S., § 40; I.C.A., § 30-136; am. 2013, ch. 41, § 4, p. 85.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 41, in the first paragraph, substituted "nineteen (19)" for "three (3)" and "twenty-two (22)" for "eighteen (18)"; and, in the second paragraph, substituted "township line to the northwest corner of township eight (8) south, range twenty-two (22) east" for "said section line to the northwest corner of section three (3), township nine (9) south, range eighteen (18) east; thence easterly along the township line to the northwest corner of township nine (9) south, range twenty-two (22) east; thence north along the township line to the northwest corner of township eight (8) south, range twenty-two (22) east" near the beginning.

Effective Dates.

Section 5 of S.L. 2013 declared an emergency. Approved March 12, 2013.

CHAPTER 4

CONSOLIDATION OF COUNTIES

31-402. Time for holding elections to consolidate counties. — All elections for the consolidation of counties shall be held at the November general election.

History.
1933, ch. 135, § 2, p. 206; am. 1995, ch. 118, § 21, p. 417; am. 2009, ch. 341, § 12, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, substituted "shall be held at the November general election" for "shall be held on the first Tuesday in August in the year general elections are held."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-403. Petition for consolidation. — Not less than ninety (90) days nor more than six (6) months prior to the date specified in section 31-402, Idaho Code, a petition may be circulated in any county praying for the consolidation of such county with another county. Such petition shall be entitled in the district court of the former county, and shall be in substantially the following form:

"The undersigned qualified electors of .... County, State of Idaho, hereby petition the court thereof to order an election to be held on the first Tuesday following the first Monday of November in an even-numbered year to determine whether said .... County shall be consolidated with .... County (naming the county with which it is desired to consolidate), under the provisions of the law applicable to such elections."

Such petition may consist of any number of copies required for convenient and rapid circulation and the various copies shall be considered as one (1) petition. If said petition, within the time limits hereinbefore fixed, is signed by a number of qualified electors of the county which it is proposed to consolidate, equal in number to two-thirds (2/3) of all votes cast therein at the last general election, such petition shall thereupon, and not later than eighty (80) days prior to said election date, be filed with the clerk of the district court of such county. Such petition shall be deemed a proposal to consolidate said county with the county named therein.

History.
1933, ch. 135, § 3, p. 206; am. 1995, ch. 118, § 22, p. 417; am. 2009, ch. 341, § 13, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the second paragraph, deleted "or judge" following "court" and substituted "first Tuesday following the first Monday of November in an even-numbered year" for "first Tuesday in August next hereafter"; and, in the second sentence in the last paragraph, substituted "said election date" for "said first Tuesday in August."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-407. Provision for holding election — Notice thereof to be given. — If the court shall order an election, copies of such order, certified by the clerk, shall at once be filed with the county clerk of the county which it is proposed to consolidate, and also with the county clerk of the county with which the consolidation is proposed. The county clerk of each of said counties shall cause a notice of the holding of said election to be published in a newspaper published in each county designating the consolidation proposal to be voted on, the date of the election, the hours during which the polls will be opened, and the polling places in each precinct. The first publication of such notice shall be made not less than twelve (12) days prior to the election and the last publication of notice shall be made not less than five (5) days prior to the election. The county clerk in each county shall likewise, not less than thirty (30) days before such election, cause a copy of such notice to be posted in a conspicuous place in each precinct in each county and in/or near each post office situated therein. If no newspaper be published in such county, the notice given by posting as herein provided shall be sufficient. In any conflict between these election specifications and those provided in chapter 14, title 34, Idaho Code, the provisions of the latter shall prevail.

History.
1933, ch. 135, § 7, p. 206; am. 2009, ch. 341, § 14, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-408. Preparation and form of ballots. — It shall be the duty of the county clerk of each of said counties to cause ballots to be printed to state:

"Shall .... County be consolidated with .... County?
☐ Yes
☐ No"

The county clerk in each county shall send the requisite number of ballots to each voting precinct in his county in a reasonable time before the election. All ballots and supplies to be used at such election, and the expenses necessarily incurred in the preparation and conduct of such election, shall be paid out of the county election fund as in the case of general elections.

History.
1933, ch. 135, § 8, p. 206; am. 2009, ch. 341, § 15, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the first and last paragraph, substituted "clerk" for "auditor"; in the first paragraph, substituted "to be printed to state" for "to be printed which ballots shall be three (3) inches square,

or as near thereto as practicable, and on one side shall be printed the following"; and in the last paragraph, substituted "shall be paid out of the county election fund" for "shall be paid out of the county treasury."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 6

COUNTIES AS BODIES CORPORATE

31-604. Enumeration of powers.

JUDICIAL DECISIONS

Cited in: In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

CHAPTER 7

BOARD OF COUNTY COMMISSIONERS

31-710. Meetings.

JUDICIAL DECISIONS

Appeal from Board Order.

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners' visit to the site of the proposed subdivision was conducted in violation of provision of Idaho's open meeting laws, including §§ 67-2342, 67-2341, and this section. While proper notice of the public hearing/site visit was provided, the board acted in bad faith by intentionally avoiding a group that was gathered near the entrance to the site location and precluding interested parties from actually attending. Noble v. Kootenai County, 148 Idaho 937, 231 P.3d 1034 (2010).

CHAPTER 8

POWERS AND DUTIES OF BOARD OF COMMISSIONERS

31-802. Supervision of county officers.

JUDICIAL DECISIONS

Limitations on Power of Board.

County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners' statutory duties under §§ 20-622 and 31-1503 were not implicated, and no other statute empowered the commissioners to direct the sheriff's conduct regarding bail, which was a matter within the sheriff's authority under §§ 8-106, 19-817, 31-2202(6). Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

31-807A. Commissioners must be disinterested.

JUDICIAL DECISIONS

Applicability.

The plain language of this section applies only to county contracts for the opening or improving of roads. This section does not apply to a validation proceeding, which does not involve any contract, but results in an order declaring a road to be, or not to be, public. Sopatyk v. Lemhi County, 151 Idaho 809, 264 P.3d 916 (2011).

31-808. Sale of county property — General procedure — Sale of property acquired through tax deed — Procedure after attempted auction — Exchange of county property — Sale of certain odd-lot property — Sale, exchange or donation of property to other units of government. — (1) A board of county commissioners shall have the power and authority to sell or offer for sale at public auction any real or personal property belonging to the county not necessary for its use. However, personal property not exceeding two hundred fifty dollars ($250) in value may be sold at private sale without notice or public auction. Prior to offering the property for sale, the board of county commissioners shall advertise notice of the auction in a newspaper, as defined in section 60-106, Idaho Code, either published in the county or having a general circulation in the county, not less than ten (10) calendar days prior to the auction. If the property to be sold is real property, the notice to be published shall contain the legal description as well as the street address of the property. If the property is outside the corporate limits of a city and does not have a street address, then the description shall also contain the distance and direction of the location of the real property from the closest city.

If the property to be sold is acquired by tax deed, the notice required to be published shall include, next to the description of the property, the name of the taxpayer as it appears in the delinquent tax certificate upon which the tax deed was issued. The property shall be sold to the highest bidder. However, the board of county commissioners shall set the minimum bid for the tax deeded property to include all property taxes owing, interest and costs but they may reserve the right to reject any and all bids and shall have discretionary authority to reject or accept any bid which may be made for an amount less than the total amount of all delinquent taxes, late charges, interest and costs, including other costs associated with the property, advertising, and sale, which may have accrued against any property so offered for sale, including the amount specified in the tax deed to the county. Such action by the board in setting the minimum bid shall be duly noted in

their minutes. Failure to do so shall not invalidate a sale. For tax deeded property, the board of county commissioners shall conduct an auction no later than fourteen (14) months from the issuance of the tax deed.

(2)(a) Proceeds from the sale of county property not acquired by tax deed shall be paid into the county treasury for the general use of the county.

(b) If the property to be sold has been acquired by tax deed, pursuant to the provisions of chapter 10, title 63, Idaho Code, the proceeds from the sale, after payment of all delinquent taxes, late charges, interest and costs, including the cost for maintaining the property, shall be apportioned by the board of county commissioners to parties in interest as defined in section 63-201, Idaho Code, and then to the owner(s) of record of such property at the time the tax deed was issued on the property.

(c) Once such tax deeded property has been sold, the board of county commissioners shall within thirty (30) days notify all parties in interest of such sale and the amount of the excess proceeds. Such parties in interest shall respond to the board of county commissioners, within sixty (60) days of receiving such notice, making claim on the proceeds. No responses postmarked or received after the sixtieth day shall be accepted. The board of county commissioners shall then make payment to parties in interest in priority of the liens pursuant to law, within sixty (60) days. All funds available after payment to parties in interest shall be returned to the owner(s) of record of the property at the time the tax deed was issued. All costs associated with the compliance of this section shall be deducted from any amounts refunded to the parties in interest or owner(s) of record.

(3) Any property sold may be carried on a recorded contract with the county for a term not to exceed ten (10) years and at an interest rate not to exceed the rate of interest specified in section 28-22-104(1), Idaho Code. The board of county commissioners shall have the authority to cancel any contract if the purchaser fails to comply with any of the terms of the contract and the county shall retain all payments made on the contract. The title to all property sold on contract shall be retained in the name of the county until full payment has been made by the purchaser. However, the purchaser shall be responsible for payment of all property taxes during the period of the contract.

(4) Any sale of property by the county shall vest in the purchaser all of the right, title and interest of the county in the property, including all delinquent taxes which have become a lien on the property since the date of issue of the tax deed, if any.

(5) In addition to the purchase price, a purchaser of county property, including property acquired by tax deed, shall pay all fees required by law for the transfer of property. No deed for any real estate purchased pursuant to the provisions of this section shall be delivered to a purchaser until such deed has been recorded in the county making the sale.

(6) Should the county be unable to sell at a public auction any real or personal property belonging to the county, including property acquired by tax deed, it may sell the property without further notice by public or private sale upon such terms and conditions as the county deems necessary. Distribution of the proceeds of sale shall be as set forth in subsection (2) of this section.

(7) The board of county commissioners may at its discretion, when in the county's best interest, exchange and do all things necessary to exchange any of the real property now or hereafter held and owned by the county for real property of equal value, public or private, to consolidate county real property or aid the county in the control and management or use of county real property.

(8) The board of county commissioners may, by resolution, declare certain parcels of real property as odd-lot property, all or portions of which are not needed for public purposes and are excess to the needs of the county. For purposes of this subsection, odd-lot property is defined as that property that has an irregular shape or is a remnant and has value primarily to an adjoining property owner. Odd-lot property may be sold to an adjacent property owner for fair market value that is estimated by a land appraiser licensed to appraise property in the state of Idaho. If, after thirty (30) days' written notice, an adjoining property owner or owners do not desire to purchase the odd-lot property, the board of county commissioners may sell the property to any other interested party for not less than the appraised value. When a sale of odd-lot property is agreed to, a public advertisement of the pending sale shall be published in one (1) edition of the newspaper as defined in subsection (1) of this section, and the public shall have fifteen (15) days to object to the sale in writing. The board of county commissioners shall make the final determination regarding the sale of odd-lot property in an open meeting.

(9) In addition to any other powers granted by law, the board of county commissioners may at their discretion, grant to or exchange with the federal government, the state of Idaho, any political subdivision or taxing district of the state of Idaho or any local historical society which is incorporated as an Idaho nonprofit corporation which operates primarily in the county or maintains a museum in the county, with or without compensation, any real or personal property or any interest in such property owned by the county or acquired by tax deed, after adoption of a resolution by the board of county commissioners that the grant or exchange of property is in the public interest. Notice of such grant or exchange shall be as provided in subsection (1) of this section and the decision may be made at any regularly or specially scheduled meeting of the board of county commissioners. The execution and delivery by the county of the deed conveying an interest in the property shall operate to discharge and cancel all levies, liens and taxes made or created for the benefit of the state, county or any other political subdivision or taxing district and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance. However, if the property conveyed is subject to a lien for one (1) or more unsatisfied special assessments, the lien shall continue until all special assessments have been paid in full. At no time shall a lien for a special assessment be extinguished prior to such special assessment having been paid in full. Any property conveyed to any local historical society by the county shall revert to the county when the property is no longer utilized for the purposes for which it was conveyed.

(10) When the county has title to mineral rights severed from the property to which they attach, and the mineral rights have value of less

than twenty-five dollars ($25.00) per acre, the board of county commissioners may act to return the mineral rights to the land from which they were severed in the following manner: the proposed action must appear on the agenda of a regular meeting of the board of county commissioners; and the motion to make the return must be adopted unanimously by the board voting in open meeting.

(11) If there are excess funds and the owner(s) of record of the property at the time the tax deed was issued on the property cannot be located, then the county treasurer shall put all remaining excess funds in an interest-bearing trust for three (3) years. The county may charge for the actual costs for performing the search, and after three (3) years, any remaining funds shall be transferred to the county indigent fund. The levy set to fund this portion of the indigent budget shall be calculated based on the budget subject to the limitation in section 63-802, Idaho Code, less the money received from the interest-bearing trust.

History.

I.C., § 31-808, as added by 1999, ch. 215, § 3, p. 573; am. 2001, ch. 333, § 1, p. 1173; am. 2003, ch. 58, § 1, p. 202; am. 2003, ch. 68, § 1, p. 227; am. 2004, ch. 318, § 4, p. 892; am. 2008, ch. 397, § 1, p. 1084.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 397, in the last paragraph in subsection (1), in the third sentence, inserted "shall set the minimum bid for the tax deeded property to include all property taxes owing, interest and costs but they" and "including other costs associated with the property, advertising, and sale," and substituted "interest and costs" for "costs and interest," and added the last three sentences; added the paragraph (2)(a) and (2)(b) designations, and in paragraph (2)(b), substituted the language beginning "payment of all delinquent taxes" for "reimbursement to the county for the cost of advertising and sale, shall be apportioned to the taxing districts in which the property is situated according to the levy applied to the year of delinquency upon which the tax deed was issued to the county"; and added paragraph (2)(c) and subsection (11).

Effective Dates.

Section 2 of S.L. 2008, ch. 397 declared an emergency retroactively to January 1, 2008 and approved April 9, 2008.

31-809A. County election fund. — There is hereby created the county election fund which shall be established in each county by resolution adopted at a public meeting of the board of county commissioners. Funds received from the state or political subdivisions for conducting elections shall be deposited into this fund. Funds also budgeted by the county to conduct the primary and general elections may be deposited or transferred into the county election fund. Funds deposited in the county election fund may be accumulated from year to year or expended on a regular basis and shall be used to pay for all costs in conducting political subdivision elections.

History.

I.C., § 31-809A, as added by 2009, ch. 341, § 16, p. 993.

STATUTORY NOTES

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-813. Control of suits.

JUDICIAL DECISIONS

Limitations on Power of Board.

County commissioners did not assume the obligation to control the sheriff's conduct with regard to bail bond procedures by endorsing a settlement agreement because they could not expand their statutory authority by contractually creating or acquiring the duty to control the conduct of other constitutional officers. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

31-819. Publication of proceedings. — To cause to be published monthly such statement as will clearly give notice to the public of all its acts and proceedings, and, shall include a brief financial summary indicating the total amount spent from each county fund during the month. A more detailed report of expenditures may be published if deemed necessary by the board. Annually, a full financial report shall be prepared and available for public inspection which shows for each fund the sources of income, expenditures during the year, current fund balances, and other financial information as determined by the board. Within thirty (30) days of the annual audit's preparation as provided in section 31-1701, Idaho Code, the board shall cause to be published a summary of the balance sheet and a summary of the statement of revenues and expenditures. Such statements as well as all other public notices of proceedings of, or to be had before the board, not otherwise specially provided for, must be published in accordance with the requirements of chapter 1, title 60, Idaho Code.

History.

R.S., § 1759; R.C., § 1917s, as added by 1913, ch. 143, § 2, p. 508; reen. C.L., § 1917s; C.S., § 3434; I.C.A., § 30-725; am. 1935, ch. 76, § 1, p. 131; am. 1951, ch. 294, § 1, p. 651; am. 1979, ch. 90, § 1, p. 217; am. 1989, ch. 73, § 12, p. 117; am. 1990, ch. 347, § 1, p. 937; am. 2008, ch. 37, § 1, p. 89.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 37, rewrote the fourth sentence, which formerly read: "The board shall cause to be published annually not less than the consolidated balance sheet of said annual report," and in the last sentence, substituted "in accordance with the requirements of chapter 1, title 60, Idaho Code" for "in one (1) issue of such newspaper published in the county and which newspaper also has the largest average paid circulation in the county for the last six (6) months of the prior calendar year of the year in which such statements and other public notices of proceedings are required to be made by this act."

31-836. Lease of county property. — Except as otherwise provided by law, the board of county commissioners may lease any property belonging to the county:

(1) Without public auction for a term not exceeding five (5) years at such rental as may be determined upon by the unanimous vote of such board, or at public auction to the highest bidder for a term not exceeding thirty (30) years. Rents shall be paid annually in advance provided, however, that the provision requiring the payment of rent in advance shall not apply to a lease to the federal or state government, a municipal corporation of this state, or any governmental agency or department.

(2) Any hospital or hospital grounds or portions thereof to be used in

conjunction with hospital operations or hospital equipment belonging to the county may be leased by the board without public auction for a term not exceeding thirty-five (35) years; or any property suitable for a shelter intended to house victims of sexual or domestic violence which property belonging to the county may be leased by the board without public auction to any nonprofit corporation or association organized for the purpose of erecting and maintaining a shelter to house victims of sexual or domestic violence for a term not exceeding twenty (20) years; and, provided further, that the county, either as lessor or lessee, may enter into any lease or other transaction concerning any property with the Idaho health facilities authority for any term not to exceed ninety-nine (99) years.

(3) Any property belonging to the county may be leased by the board without public auction for a term not to exceed thirty (30) years, to be used for an industrial park in conjunction with economic development purposes. An industrial park for purposes of this section means facilities for manufacturing, processing, production, assembly warehousing or activities associated therewith.

(4) Without public auction the board of county commissioners may lease any property belonging to the county and not necessary for its use to the state of Idaho or any political subdivision thereof for any public purpose, to any nonprofit corporation or association organized for the purpose of erecting and maintaining thereon any play field, recreation park or stadium to serve as a memorial to the living or deceased soldiers, sailors and marines of an armed conflict entered into by the United States, or to any hospital district organized under chapter 13, title 39, Idaho Code, for use in furthering the purposes of said district or to any nonprofit corporation or association organized for the purpose of erecting and maintaining an animal shelter. Such lease may be for any term not to exceed ninety-nine (99) years, may provide for only a nominal rental to the county and shall, by its provisions, terminate when the property so leased ceases to be used for any public purpose, as an animal shelter, as a play field, recreation park or stadium serving as a memorial, or by the hospital district for its purposes. Nothing in this subsection shall prohibit the naming or title sponsorship of any play field, recreation park or stadium erected and maintained as a memorial as provided in this subsection as long as the play field, recreation park or stadium continues to serve as such memorial.

History.

C.S., § 3423a, as added by 1927, ch. 159, § 2, p. 212; I.C.A., § 30-714; am. 1933, ch. 200, § 1, p. 393; am. 1937, ch. 123, § 1, p. 184; am. 1939, ch. 26, § 1, p. 56; am. 1947, ch. 190, § 1, p. 459; am. 1959, ch. 49, § 1, p. 104; am. 1961, ch. 103, § 1, p. 152; am. 1967, ch. 24, § 1, p. 41; am. 1977, ch. 60, § 2, p. 115; am. 1988, ch. 310, § 1, p. 966; am. 1989, ch. 115, § 1, p. 259; am. 1994, ch. 158, § 1, p. 358; am. 1995, ch. 156, § 1, p. 633; am. 2000, ch. 128, § 1, p. 303; am. 2014, ch. 117, § 1, p. 333.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 117, substituted "term not exceeding thirty-five (35) years" for "term not exceeding twenty (20) years" near the beginning of subsection (2).

31-855. Neglect of duty by commissioners. — Any commissioner who neglects or refuses, without just cause therefor, to perform any duty imposed on him, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently or corruptly attempts to perform an act, as commissioner, unauthorized by law, shall be guilty of a misdemeanor.

History.
R.S., § 1791; am. and reen. R.C. & C.L., § 1930; C.S., § 3462; I.C.A., § 30-753; am. 1989, ch. 73, § 24, p. 117; am. 2011, ch. 151, § 12, p. 414.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 151, substituted "shall be guilty of a misdemeanor" for "shall be prosecuted as provided in section 18-316, Idaho Code" at the end of the section.

31-857. School, road, herd and other districts — Presumption of validity of creation or dissolution. — Whenever any school district, road district, herd district, or other district has heretofore been, or shall hereafter be, declared to be created, established, disestablished, dissolved, or modified, by an order of the board of county commissioners in any county of the state of Idaho, a legal prima facie presumption is hereby declared to exist, after a lapse of two (2) years from the date of such order, that all proceedings and jurisdictional steps preceding the making of such order have been properly and regularly taken so as to warrant said board in making said order, and the burden of proof shall rest upon the party who shall deny, dispute, or question the validity of said order to show that any of such preceding proceedings or jurisdictional steps were not properly or regularly taken; and such prima facie presumption shall be a rule of evidence in all courts in the state of Idaho. No challenge to the proceedings or jurisdictional steps preceding such an order, shall be heard or considered after seven (7) years has lapsed from the date of the order.

History.
1935, ch. 79, § 1, p. 133; am. 1989, ch. 73, § 25, p. 117; am. 2009, ch. 43, § 1, p. 124.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 43, added the last sentence.

JUDICIAL DECISIONS

Cited in: Arguello v. Lee, Case No. CV-06-485-E-BLW, 2008 U.S. Dist. LEXIS 117103 (D. Idaho Oct. 8, 2008).

31-867. Special levy for courts — District court fund.

JUDICIAL DECISIONS

Reimbursement.

Although the district court has authority over the clerk of the district court to order return of undisbursed funds, where a conviction was vacated and the defendant sought reimbursement for fines and costs he paid, once the funds had been disbursed into the district court fund they were subject to the authority of the board of county commissioners. State v. Peterson, 153 Idaho 157, 280 P.3d 184 (Ct. App. 2012).

31-870. Fees for county services. — (1) Notwithstanding any other provision of law, a board of county commissioners may impose and collect fees for those services provided by the county which would otherwise be funded by ad valorem tax revenues. The fees collected pursuant to this section shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered. Taxing districts other than counties may impose fees for services as provided in section 63-1311, Idaho Code.

(2) The board of county commissioners may establish and provide for the collection of a solid waste fee in accordance with a request made pursuant to this section, and such fee shall be certified and collected in the same manner provided by law for the collection of real or personal property taxes.

(3) The administrative fee authorized under the provisions of this section and collected for issuance of motor vehicle registrations pursuant to chapter 4, title 49, Idaho Code, shall be the same for any registration issued pursuant to section 49-402B, Idaho Code, and may not be doubled or in any way increased solely because of registration under that section.

History.

I.C., § 31-870, as added by 1980, ch. 290, § 1, p. 758; am. 1988, ch. 201, § 2, p. 379; am. 1993, ch. 41, § 1, p. 113; am. 1996, ch. 322, § 7, p. 1029; am. 1999, ch. 90, § 1, p. 291.

STATUTORY NOTES

Compiler's Notes.

The section has been set out to correct an error in the historical citation in the bound volume.

31-871. Classification and retention of records. — (1) County records shall be classified as follows:

(a) "Permanent records" shall consist of, but not be limited to, the following: proceedings of the governing body, ordinances, resolutions, building plans and specifications for commercial projects and government buildings, bond register, warrant register, budget records, general ledger, cash books and records affecting the title to real property or liens thereon, and other documents or records as may be deemed of permanent nature by the board of county commissioners.

(b) "Semipermanent records" shall consist of, but not be limited to, the following: claims, contracts, canceled checks, warrants, duplicate warrants, license applications, building applications for commercial projects and government buildings, departmental reports, purchase orders, vouchers, duplicate receipts, bonds and coupons, financial records, and other

documents or records as may be deemed of semipermanent nature by the board of county commissioners.

(c) "Temporary records" shall consist of, but not be limited to, the following: correspondence not related to subsections (1) and (2) of this section, building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval, cash receipts subject to audit, and other records as may be deemed temporary by the board of county commissioners.

(d) Those records not included in subsection (1)(a), (b) or (c) of this section shall be classified as permanent, semipermanent or temporary by the board of county commissioners and upon the advice of the office of the prosecuting attorney.

(2) County records shall be retained as follows:

(a) Permanent records shall be retained for not less than ten (10) years.

(b) Semipermanent records shall be kept for not less than five (5) years after date of issuance or completion of the matter contained within the record.

(c) Temporary records shall be retained for not less than two (2) years.

(d) Records may only be destroyed by resolution of the board of county commissioners after regular audit and upon the advice of the prosecuting attorney. A resolution ordering destruction must list, in detail, records to be destroyed. Such disposition shall be under the direction and supervision of the elected official or department head responsible for such records.

(e) The provisions of this section shall control the classification and retention schedules of all county records unless otherwise provided in Idaho Code or any applicable federal law.

History.

I.C., § 31-871, as added by 1993, ch. 140, § 2, p. 371; am. 2000, ch. 54, § 1, p. 108; am. 2001, ch. 99, § 3, p. 248; am. 2010, ch. 62, § 1, p. 111; am. 2011, ch. 285, § 1, p. 778.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 62, substituted "elected official or department head responsible for such records" for "board's clerk" in the last sentence of paragraph (2)(d).

The 2011 amendment, by ch. 285, in paragraph (1)(b), deleted "registration and other election records excluding election ballots and tally books" following "bonds and coupons" and, in paragraph (1)(c), deleted "election ballots and tally books" preceding "and other records."

Effective Dates.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

31-871A. Retention of county records using photographic and digital media. — (1) A county official may reproduce and retain documents in a photographic, digital or other nonpaper medium. The medium in which a document is retained shall accurately reproduce the document in paper form during the period for which the document must be retained and shall preclude unauthorized alteration of the document.

(2) If the medium chosen for retention is photographic, all film used must

meet the quality standards of the American national standards institute (ANSI).

(3) If the medium chosen for retention is digital, the medium must provide for reproduction on paper at a resolution of at least two hundred (200) dots per inch.

(4) A document retained by the county in any form or medium permitted under this section shall be deemed an original public record for all purposes. A reproduction or copy of such a document, certified by the county official, shall be deemed to be a transcript or certified copy of the original and shall be admissible before any court or administrative hearing.

(5) Once a paper document is retained in a nonpaper medium as authorized by this section, the original paper document may be disposed of or returned to the sender.

(6) Whenever any record is reproduced by photographic or digital process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fire-resistant vault, or off-site storage facility, and he shall retain the other copy in his office with suitable equipment for displaying such record at not less than original size and for making copies of the record.

History.
I.C., § 31-871A, as added by 2014, ch. 237, § 4, p. 599.

31-872. Regulation of firearms — Control by state. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised I.C., § 31-872, as added by 1984, ch. 243, § 1, p. 590, was repealed by S.L. 2008, ch. 304, § 1. For present comparable provisions, see § 18-3302J.

31-878. Misdemeanor probation services. — The board of county commissioners shall provide for misdemeanor probation services to supervise misdemeanor offenders, in those cases where such probation supervision has been ordered by the sentencing court, and perform such functions as prescribed by the administrative district judge in each judicial district. The board of county commissioners shall provide for misdemeanor probation services through employment of staff, contract or any other process that will accomplish the purposes of this section. Counties shall not be obligated to provide misdemeanor probation services beyond the funds generated by the fees collected pursuant to the provisions of section 31-3201D, Idaho Code, and any additional funds that may be annually appropriated by the board of county commissioners.

History.
I.C., § 31-878, as added by 2008, ch. 88, § 5, p. 246; am. 2011, ch. 128, § 1, p. 354.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 128, inserted "board of" near the beginning of the first sentence and added the second sentence.

31-879. Waiver of right to magistrate judge. — The board of county commissioners shall have the authority to adopt by majority vote a resolution waiving the right to a resident magistrate judge to which the county would otherwise be entitled pursuant to section 1-2205, Idaho Code. When a board of county commissioners has adopted such a resolution, and has not subsequently rescinded such resolution, the district magistrates commission for the judicial district in which the county is located is not required to appoint a resident magistrate judge for that county.

History.
I.C., § 31-879, as added by 2008, ch. 38, § 4, p. 92.

CHAPTER 14

FIRE PROTECTION DISTRICT

31-1406. Election — Qualification of electors — Canvass. — Such election shall be conducted in accordance with title 34, Idaho Code. The board of county commissioners shall establish as many election precincts within such proposed fire protection district as may be necessary, and define the boundaries thereof. The county clerk shall appoint judges of election, who shall perform the duties as judges of election under title 34, Idaho Code; and the result of such election shall be certified, and canvassed and declared by the board of county commissioners.

History.
1943, ch. 161, § 6, p. 324; am. 1982, ch. 254, § 6, p. 646; am. 1986, ch. 137, § 4, p. 367; am. 1995, ch. 118, § 27, p. 417; am. 2009, ch. 341, § 17, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-1408. Fire protection board — Appointment of commissioners — Oath. — (1) There shall be three (3) fire protection commissioners in

each district, who shall constitute the fire protection board. The first fire protection commissioners of such fire protection district shall be appointed by the governor. The certificate of such appointment shall be made in triplicate; one (1) certificate shall be filed in the office of the county recorder of the county; one (1) with the clerk of the board of county commissioners, and one (1) with the assessor and tax collector of the county. Every fire protection commissioner and appointed officer shall take and subscribe the official oath, which oath shall be filed in the office of the board of fire protection commissioners. If thirty-three percent (33%) of the property and/or population in the fire protection district is situated in two (2) or more counties, not more than two (2) of the fire protection district commissioners shall be from the same county, unless pursuant to section 31-1410A, Idaho Code, the board is comprised of five (5) members, in which event not more than three (3) of the commissioners shall be from the same county.

(2) The oath of office of fire protection commissioners and appointed officers shall be taken before the secretary or the president of the board of the fire district at the first regularly scheduled board meeting in January succeeding each election. Provided however, in the event of an inability to appear for the taking of the oath, a duly elected fire protection commissioner may be sworn in and may subscribe to the oath wherever he may be, provided he appear before an officer duly authorized to administer oaths, and provided further, that any person who is in any branch of the armed forces of the United States of America, may appear before any person qualified to administer oaths as prescribed in section 55-705, Idaho Code, and may take and subscribe the oath of office as provided for in section 59-401, Idaho Code, and the oath of office shall have the same force and effect as though it were taken before the secretary or the president of the fire district pursuant to this subsection.

History.

1943, ch. 161, § 8, p. 324; am. 1986, ch. 137, § 6, p. 367; am. 1998, ch. 190, § 1, p. 691; am. 2006, ch. 318, § 4, p. 990; am. 2010, ch. 337, § 1, p. 891.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 337, in the last sentence in subsection (1), inserted "thirty-three percent (33%) of the property and/or population in the fire protection"; and in subsection (2), in the first sentence, substituted "at the first regularly scheduled board meeting in January" for "on the second Monday of January," and deleted "general" preceding "election," and in the second sentence, deleted "for any reason" following "in the event."

31-1410. Election of commissioners. — (1) On the first Tuesday following the first Monday of November, of the next odd-numbered year, following the organization of a fire protection district, three (3) fire protection district commissioners shall be elected. Every odd-numbered year thereafter, an election shall be held for the election of fire district commissioners as described in this section. For commissioners whose offices expire in 2012 and in any even-numbered year, such commissioners shall remain in office until the next election in an odd-numbered year. The county clerk shall have power to make such regulations for the conduct of such election as are

consistent with the statutory provisions of chapter 14, title 34, Idaho Code. At their meeting next preceding such election, the board of fire district commissioners shall divide the district into three (3) subdistricts as nearly equal in population, area and mileage as practicable, to be known as fire protection commissioners subdistricts one, two and three. Thereafter, the board of fire district commissioners may revise subdistricts when it deems it necessary due to significant shifts in population. Provided however, of the commissioners comprising the board, not more than one (1) commissioner shall be an elector of the same fire protection commissioners subdistrict. The revision of subdistricts shall not disqualify any elected commissioner from the completion of the term for which he or she has been duly elected. At the first election following organization of a fire protection district, the commissioner from fire protection subdistrict one shall be elected to a term of two (2) years, the commissioner from subdistricts two and three shall be elected to a term of four (4) years; thereafter the term of office of all commissioners shall be four (4) years. Such elections and all other elections held under this law, shall be held in conformity with the general laws of the state including chapter 14, title 34, Idaho Code.

(2) A fire protection district whose terms and elections were established by prior law shall convert to the election of commissioners as provided in subsection (1) of this section.

(3) In any election for fire protection district commissioner, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a subdistrict to be filled, it shall not be necessary for the candidate of that subdistrict to stand for election, and the board of the fire protection district shall declare such candidate elected as commissioner, and the secretary of the district shall immediately make and deliver to such person a certificate of election.

The results of any election for fire protection district commissioner shall be certified by the county clerk of the county or counties of the district and the results reported to the district.

History.

I.C., § 31-1410, as added by 2009, ch. 341, § 18, p. 993; am. 2010, ch. 185, § 1, p. 382.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, rewrote subsection (1) to the extent that a detailed comparison is impracticable; and, in the last paragraph, substituted "shall be certified by the county clerk of the county or counties of the district and the results reported to the district" for "shall be certified to the county clerk of the county or counties in which the district is located."

The 2010 amendment, by ch. 185, rewrote subsections (1) and (2) to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-1410A. Decision to increase the size of the board. — Subsequent to the creation of a fire protection district and the appointment of the first board of fire protection commissioners, the fire protection board may, by

a majority vote of all of the fire protection district board members elect to increase the size of the board to five (5) members.

If the board of fire protection commissioners elects to expand the board to five (5) members, the existing board members shall subdivide the district into five (5) subdivisions as nearly equal in population, area and mileage as practicable to be known as subdistricts one, two, three, four and five.

At the first election following the decision of the board of fire protection commissioners to expand the board from three (3) to five (5) members, five (5) commissioners shall be elected. The commissioners from fire protection subdistricts one and two shall be elected to a term of two (2) years, the commissioners from subdistricts three, four and five shall be elected to a term of four (4) years. Thereafter, the term of all commissioners shall be four (4) years.

A fire district which, prior to the effective date of this section, had elected to expand a board from three (3) to five (5) members shall, prior to the next election of the district, adopt a transition schedule as nearly reflecting the schedule provided in this section as possible[.] For commissioners whose offices expire in 2012 and in any even-numbered year, such commissioners shall remain in office until the next election in an odd-numbered year.

History.

I.C., § 31-1408A, as added by 1998, ch. 190, § 2, p. 691; am. 2001, ch. 109, § 1, p. 372; am. and redesig. 2006, ch. 318, § 5, p. 990; am. 2011, ch. 11, § 4, p. 24.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 11, substituted "subdistricts one and two shall be elected to a term of two (2) years, the commissioners from subdistricts three, four and five shall be elected to a term of four (4) years" for "subdistrict one shall be elected for a term of one (1) year; the commissioner from subdistrict two for two (2) years; the commissioner from subdistrict three for three (3) years; and the commissioners from subdistricts four and five shall be elected for terms of four (4) years" in the second sentence of the third paragraph; and in the last paragraph, deleted "so that one (1) commissioner is elected each year except that in one (1) year, two (2) commissioners are elected" from the end of the first sentence and added the last sentence.

Compiler's Notes.

The bracketed insertion in the fourth paragraph was inserted by the compiler to replace punctuation inadvertently deleted by the 2011 amendment.

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

31-1412. Annexation of territory in adjoining county. — After the organization of a fire protection district, additional territory, contiguous or noncontiguous thereto and located wholly within an adjoining county, may be added to the district and become a part thereof as hereinafter provided in this section. Noncontiguous territory annexed to an existing fire protection district shall consist of not less than forty (40) contiguous acres. The proceedings for annexation shall be the same as the proceedings for the creation and organization of a fire protection district with the following exceptions and modifications:

(1) Such proceeding may be initiated by:

(a) Two (2) or more of the holders of title or evidence of title to lands aggregating not less than one hundred (100) acres; or

(b) One hundred percent (100%) of the holders of title or evidence of title to lands aggregating not less than one hundred (100) acres.

(2) A petition, such as is required by section 31-1403, Idaho Code, shall be filed with the fire protection board of the fire protection district into which petitioners seek to be annexed. The petition shall accurately describe the boundaries of the territory and name and describe the fire protection district to which annexation is sought. The petition shall be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed, and showing the location of the intervening county line. An election is not required pursuant to subsection (5) of this section when the petition includes a certification as to the following: (a) that one hundred percent (100%) of the holders of title or evidence of title of the property proposed to be annexed have joined in the initial petition requesting annexation; and (b) that there is no electorate present in the property proposed to be annexed. The fire protection board shall follow the notice and public hearing requirements contained in section 31-1411, Idaho Code, and if it approves of the annexation proposal, it will issue a written resolution consenting to the proposed annexation. If the fire protection board issues such a resolution, the petitioners shall proceed in accordance with the steps outlined in this section.

(3) A petition, such as is required by section 31-1403, Idaho Code, shall be filed with the board of county commissioners of the county in which is situated the territory proposed to be annexed but shall accurately describe the boundaries of the territory, and name and describe the fire protection district to which annexation is sought, shall be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed, and showing the location of the intervening county line. An election is not required pursuant to subsection (5) of this section when the petition includes a certification as to the following: (a) that one hundred percent (100%) of the holders of title or evidence of title of the property proposed to be annexed have joined in the initial petition requesting annexation; and (b) that there is no electorate present in the property proposed to be annexed. The petition must be accompanied by a certified copy of the resolution of the board of fire protection commissioners consenting to the annexation.

(4) The notice of hearing on the petition shall state that certain territory described in the petition, is proposed to be annexed to a fire protection district named in the petition and that any taxpayer within the boundaries of the territory proposed to be annexed may offer objections at the time and place specified. The order entered by the local board of county commissioners on the petition shall, if the petition be granted, fix the boundaries of the annexed territory and direct that a map of it be prepared under the direction of the clerk of the board, and certified copies of the order and map shall be transmitted to the clerk of the board of county commissioners of the county in which the original fire protection district is situated.

(5) An election shall be conducted by the county clerk or elections office in the county where the land sought to be annexed is situated, subject to the

provisions of section 34-106, Idaho Code, in the territory proposed to be annexed for the purpose of voting upon the annexation and the notice shall accurately describe the boundaries of the territory proposed to be annexed, shall state the name of the district to which annexation is sought, and that a map showing the boundaries of the district and of the territory proposed to be annexed is on file in the office of the clerk of the local board of county commissioners. The notice shall prescribe the form of ballot to be cast, which shall contain the words "In favor of annexation to .... Fire Protection District" and "Against annexation to .... Fire Protection District," and shall direct that the voter indicate his choice thereon by a cross (X). An election pursuant to the provisions of this subsection shall accomplish no purpose and, therefore, shall not be required if the following conditions are certified in the petition(s) submitted in accordance with subsections (2) and (3) of this section: (a) that one hundred percent (100%) of the holders of title or evidence of title of the property proposed to be annexed have joined in the initial petition requesting annexation; and (b) that there is no electorate present in the property sought to be annexed.

(6) The territory proposed to be annexed shall constitute one (1) election precinct and there shall be added to the usual elector's oath, in case of challenge, the following words: "And I am a resident within the boundaries of the territory proposed to be annexed to .... Fire Protection District." The returns of the election shall be canvassed by the board of the county commissioners of the county in which the territory proposed to be annexed is situated, and if it shall appear from the canvass that more than one-half (1/2) of the voters are in favor of the annexation, the board shall, by order entered on its minutes, declare the territory a part of the fire protection district to which annexation is sought, and a certified copy of the order shall be transmitted to the fire protection board of the original district, and also to the board of the county commissioners of the county in which the original district is situated. A certified copy of the order shall also be filed in the office of the county recorder of the county in which the territory proposed to be annexed is situated. At the first meeting of the board of fire protection commissioners following the annexation of property from another county, the board shall resubdivide the expanded fire protection district into three (3) subdivisions, as nearly equal in population and area as practicable. Not more than one (1) fire protection district commissioner shall reside in each subdistrict. If, because of resubdistricting, two (2) or more commissioners reside in the same subdistrict, they shall draw lots to determine who shall remain in office. The remaining commissioners on the board shall appoint, as necessary, persons to fill vacancies created as a result of annexation pursuant to the provisions of section 31-1409, Idaho Code. An appointee shall serve the remainder of the term of office he or she is appointed to fill. Certified copies of appointments of secretary and treasurer of the district shall be filed with the clerk of the board of county commissioners and with the tax collector of each county in which any portion of the district is situated and all taxes levied by the district shall be certified to, and extended, collected and remitted by, the proper officers of the county in which is situated the property subject to the levy.

History.

1943, ch. 161, § 12, p. 324; am. 1975, ch. 219, § 1, p. 610; am. 1980, ch. 350, § 6, p. 887; am. 1984, ch. 117, § 1, p. 262; am. 1984, ch. 202, § 3, p. 493; am. 1994, ch. 360, § 3, p. 1127; am. 1995, ch. 118, § 30, p. 417; am. 2006, ch. 318, § 11, p. 990; am. 2010, ch. 176, § 1, p. 363.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 176, added the paragraph (1)(a) designation and paragraph (1)(b); added the fourth sentence in subsection (2); added the third sentence in subsection (3); and added the last sentence in subsection (5).

31-1413. Consolidation of districts — Hearing — Protest — Election. — Except as provided for in section 31-1423(2)(b), Idaho Code, any fire protection district may consolidate with one (1) or more existing fire protection districts subject to the following procedure, or pursuant to an election for consolidation as provided in section 31-1414, Idaho Code, and with the following effects:

(1) If, in the opinion of the board of any fire protection district, it would be to the advantage of said district to consolidate with one (1) or more other existing fire protection districts, the said board shall cause to be prepared an agreement for consolidation which shall among other things provide:

(a) The name of the proposed consolidated fire protection district.

(b) That all property of the districts to be consolidated shall become the property of the consolidated district.

(c) That all debts of the districts to be consolidated shall become the debts of the consolidated district.

(d) That the existing commissioners of the districts to be consolidated shall be the commissioners of the consolidated district until the next election, said election to be held pursuant to the terms of section 31-1410, Idaho Code, at which three (3) commissioners shall be elected, unless the agreement of consolidation establishes a five (5) member board, in which case five (5) commissioners shall be elected. If the board consists of three (3) members, commissioners from fire protection subdistricts one and two shall be elected for terms of four (4) years, and the commissioner from fire protection subdistrict three shall be elected for a term of two (2) years. If the board consists of five (5) commissioners, the commissioners from fire protection subdistricts one, three and five shall be elected for terms of four (4) years, and the commissioners from fire protection subdistricts two and four shall be elected for an initial term of two (2) years. Thereafter, the term of all commissioners shall be four (4) years.

(e) That the employees of the consolidated fire protection district shall be selected from the employees of the fire protection districts being consolidated, which employees shall retain the seniority rights under their existing employment contracts.

(2) After approval of the agreement of consolidation by each of the fire protection district boards involved, the boards of commissioners of each fire protection district shall hold a hearing not less than ten (10) or more than thirty (30) days thereafter and shall cause notice of the hearing, designating the time and place to be published in at least one (1) issue of a newspaper of general circulation within the district not less than five (5) days prior to

the hearing. Any person supporting or objecting to the petition shall be heard at the hearing, if in attendance, and at the close of the hearing the board shall approve or reject the agreement of consolidation. If each board approves the agreement of consolidation, the agreement shall become effective and the consolidation of the district complete thirty (30) days after the approval unless within the thirty (30) days a petition signed by twenty-five percent (25%) of the qualified electors of one (1) of the fire protection districts objecting to the consolidation be filed with the secretary of the district. In the event of an objection, an election shall be held as provided in section 31-1405, Idaho Code, except that the question shall be "consolidation of .... fire protection district, yes," or "consolidation of .... fire protection district, no," or words equivalent thereto. If more than one-half (1/2) of the votes cast are yes, the agreement shall become effective. If more than one-half (1/2) of the votes cast are no, the agreement shall be void and of no effect; and no new consolidation shall be proposed for at least six (6) months following the date of the consolidation election.

(3) Upon the agreement of consolidation becoming effective, the board of the consolidated fire protection district shall file a certified copy of the agreement with the county recorder of each county in which such district is situated and shall comply with the provisions of section 63-215, Idaho Code. The consolidated district shall thereafter have the same rights and obligations as any other fire protection district organized under the statutes of this state.

(4) An agreement of consolidation shall not take effect unless the provisions of section 31-1423(2)(b), Idaho Code, are complied with.

History.

I.C., § 31-1411A, as added by 1967, ch. 95, § 1, p. 203; am. 1996, ch. 322, § 9, p. 1029; am. 1997, ch. 372, § 1, p. 1185; am. 1998, ch. 190, § 4, p. 691; am. and redesig. 2006, ch. 318, § 9, p. 990; am. 2013, ch. 185, § 1, p. 444.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 185, added "Except as provided for in section 31-1423(2)(b), Idaho Code" at the beginning of the introductory paragraph and added subsection (4).

31-1423. Levy — Recommended levy — Election. — (1) Each year, immediately prior to the annual county levy of taxes, the board of commissioners of each fire protection district, organized and existing under this chapter, may levy a tax upon all the taxable property within the boundaries of such district sufficient to defray the cost of equipping and maintaining the district of twenty-four hundredths percent (.24%) of market value for assessment purposes, to be used for the purposes of this chapter and for no other purpose. The levy shall be made by resolution entered upon the minutes of the board of commissioners of the fire protection district, and it shall be the duty of the secretary of the district, immediately after entry of the resolution in the minutes, to transmit to the county auditor and the county assessor certified copies of the resolution providing for such levy. Said taxes shall be collected as provided by section 63-812, Idaho Code.

(2)(a) If two (2) or more fire protection districts consolidate into one (1) district, the provisions of section 63-802, Idaho Code, shall apply to the consolidated district's budget request as if the former district which, in the year of the consolidation, has the higher levy subject to the limitations of section 63-802, Idaho Code, had annexed the other district or districts. In addition, the consolidated district shall receive the benefit of foregone increases accumulated by the former districts under section 63-802(1)(a), Idaho Code.

(b) Provided however, that if the higher levy rate provided for in subsection (2)(a) of this section exceeds the lowest levy rate of any of the districts to be consolidated by more than three percent (3%), the commissioners of the districts consolidating shall recommend, by a majority of the commissioners of each district involved, at a public hearing where a quorum of each district board is present, a levy rate that falls between the highest levy rate and the lowest levy rate. In determining such recommended levy rate, the commissioners shall recommend a levy rate that shall be sufficient to defray the cost of equipping and maintaining the new consolidated district. If such recommended levy rate exceeds by more than three percent (3%) the lowest current district levy rate of any of the districts to be consolidated, an election shall be held in a manner consistent with the provisions of section 31-1414, Idaho Code. In such election, the electors residing in the fire protection districts seeking to consolidate shall vote to approve or disapprove the recommended levy rate and the proposed consolidation of districts. The question put to the electors shall be the same or similar to the question provided for in section 31-1414, Idaho Code, except that the question shall include, in addition to the language described in section 31-1414, Idaho Code, a reference to the recommended levy rate provided for in this section and a reference to the percentage change of such recommended levy rate from the levy rate in existence in each district in the immediately preceding year.

History.

1943, ch. 161, § 20, p. 324; am. 1947, ch. 219, § 1, p. 525; am. 1965, ch. 119, § 1, p. 237; am. 1984, ch. 202, § 4, p. 493; am. 1988, ch. 316, § 1, p. 974; am. 1996, ch. 208, § 4, p. 658; am. 1996, ch. 322, § 10, p. 1029; am. 1997, ch. 117, § 1, p. 298; am. 1999, ch. 288, § 1, p. 714; am. 2002, ch. 172, § 1, p. 505; am. 2005, ch. 178, § 2, p. 549; am. and redesig. 2006, ch. 318, § 21, p. 990; am. 2011, ch. 19, § 1, p. 57; am. 2013, ch. 185, § 2, p. 444.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 19, in the last sentence of subsection (1), inserted "and the" following "county auditor" and deleted "and state board of equalization" preceding "certified copies."

The 2013 amendment, by ch. 185, added "Recommended levy — Election" to the section heading; and added paragraph (2)(b) and the paragraph (2)(a) designation.

31-1425. Exemptions. — (1) All public utilities, as defined in section 61-129, Idaho Code, shall be exempt from taxation under the provisions of this chapter and shall not be entitled to the privileges or protection hereby provided without their consent in writing filed with the clerk of the board of

county commissioners. Provided however, the board of fire protection commissioners, may enter into an agreement with a public utility for the purpose of affording the privileges or protection provided by the fire protection district to all, or such portion, of the property of the public utility as may be agreed upon between the parties and upon such terms and conditions as may be mutually agreed upon between the parties to the agreement.

(2) The board of county commissioners, upon application and recommendation of the board of fire protection commissioners, may, by an ordinance enacted by not later than the second Monday of July, exempt all or a portion of the unimproved real property within the district from taxation, and may exempt all or a portion of the taxable personal property within the district from taxation. Any ordinance of the board of county commissioners granting an exemption from taxation under the provisions of this section must provide that each category of property is treated uniformly. Notice of intent to adopt an ordinance which exempts unimproved real property shall be provided to property owners of record in substantially the same manner as required in section 67-6511(2)(b), Idaho Code, as if the ordinance were making a zoning district boundary change.

History.
1943, ch. 161, § 22, p. 324; am. 1985, ch. 153, § 1, p. 410; am. 1996, ch. 105, § 1, p. 407; am. and redesig. 2006, ch. 318, § 23, p. 990; am. 2013, ch. 216, § 4, p. 507.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 216, updated the reference in the last sentence of subsection (2) in light of the 2013 amendment of § 67-6511.

CHAPTER 15

COUNTY FINANCES AND CLAIMS AGAINST COUNTY

SECTION.

31-1503. Prohibitions on allowance of claims.

JUDICIAL DECISIONS

Supervisory Authority of Board.
County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners were not empowered to direct the sheriff's conduct regarding bail, which was a matter within the sheriff's authority. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

31-1506. Judicial review of board decisions. — (1) Unless otherwise provided by law, judicial review of any final act, order or proceeding of the board as provided in chapter 52, title 67, Idaho Code, shall be initiated by any person aggrieved thereby within the same time and in the same

manner as provided in chapter 52, title 67, Idaho Code, for judicial review of actions.

(2) Venue for judicial review of final board actions shall be in the district court of the county governed by the board.

History.

I.C., § 31-1509, as added by 1993, ch. 103, § 2, p. 262; am. 1994, ch. 241, § 1, p. 760; am. and redesig. 1995, ch. 61, § 11, p. 134; am. 2013, ch. 282, § 1, p. 731.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 282, in subsection (1), inserted "final" preceding "act" and inserted "as provided in chapter 52, title 67, Idaho Code"; and inserted "final" preceding "board actions" in subsection (2).

JUDICIAL DECISIONS

Analysis

Act, order or proceeding.
Appeal of zoning decision.

Act, Order Or Proceeding.

The decision of the board of commissioners for Boise County to terminate an employee was an action under this section and, thus, was elligible for judicial review. Ravenscroft v. Boise County, 154 Idaho 613, 301 P.3d 271 (2013).

Appeal of Zoning Decision.

A land owner may not appeal, under this section, the granting of a request for rezoning by a county in favor of an adjacent land owner. Any judicial review of a such a request should be governed by the provisions of the Local Land Use Planning Act, and specifically § 67-6521, which prior to a 2010 amendment also precluded such a judicial appeal. Giltner Dairy, LLC v. Jerome County, 150 Idaho 559, 249 P.3d 358 (2011).

Cited in: Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008); St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'r (In re O'Brien), 146 Idaho 753, 203 P.3d 683 (2009); St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010).

31-1508. Transfer of moneys — Order of payment.

JUDICIAL DECISIONS

Transfer of Funds.

Though this section generally prohibits the transfer of any money from one county fund to another, and § 40-709(7) restricts the use of certain road funds, there are exceptions thereto: the requirement of § 63-806(2) that a county transfer to the warrant redemption fund all money in the county treasury no longer needed, and, in particular, all money to the credit of the county road fund, appears to fall within these exceptions. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

CHAPTER 16

COUNTY BUDGET LAW

31-1607. Expenditures financed by bond issue — Expenditures in excess of appropriations — Liability of officers.

JUDICIAL DECISIONS

Payment of Claims Ordered.

As § 31-604 grants a county the right to sue and be sued, it is reasonable to conclude that a county's payment of a judgment arising from a lawsuit in which the county is involved was consistent with the ordinary course of municipal business; a county's payment of such a judgment, thus, would be an "ordinary" and "necessary" expenditure within the meaning of § 31-1608, would not be proscribed by this section, and would not violate Idaho Const. art. VIII, § 3. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

31-1608. Expenditures to meet emergency.

JUDICIAL DECISIONS

Payment of Judgment.

As § 31-604 grants a county the right to sue and be sued, it is reasonable to conclude that a county's payment of a judgment arising from a lawsuit in which the county is involved was consistent with the ordinary course of municipal business; a county's payment of such a judgment, thus, would be an "ordinary" and "necessary" expenditure within the meaning of this section, would not be proscribed by § 31-1607, and would not violate Idaho Const., Art. VIII, § 3. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

CHAPTER 19

COUNTY BOND ISSUES

SECTION.

SECTION.

31-1901. Commissioners may issue funding and refunding bonds. [Effective until July 1, 2017.] — The board of county commissioners of any county in this state may issue negotiable coupon bonds of their county for the purpose of paying, redeeming, funding or refunding the outstanding indebtedness of the county, whether the indebtedness exists as a warrant indebtedness or bonded indebtedness. The county may also issue bonds for the purpose of paying a judgment meeting the criteria of section 63-1305A, Idaho Code. All such bonds shall be in the form and shall be issued, sold or exchanged and redeemed in accordance with the provisions of chapter 2 of title 57, known as the "Municipal Bond Law" of the state of Idaho, except where different provision is made herein. Provided, that the authority to fund warrant indebtedness shall extend only to the funding of warrant indebtedness existing as of the second Monday in January, 1933, and providing further that all taxes and other revenues which but for the funding of warrants would have been lawfully applicable to the redemption of the warrants so funded shall, as and when collected, be apportioned to

and placed in the sinking fund for the payment of the interest and retirement of the principal of such bonds. Bonds issued for the purpose of funding warrants shall bear interest payable semiannually as the board of county commissioners may determine.

History.

R.S., § 3602; am. 1895, p. 56, § 1; reen. 1899, p. 136, § 1; reen. R.C., § 1960; am. 1913, ch. 33, p. 132; compiled and reen. C.L., § 1960; C.S., § 3519; am. 1927, ch. 262, § 10, p. 546; I.C.A., § 30-1401; am. 1933, ch. 153, § 1, p. 231; am. 1970, ch. 176, § 1, p. 508; am. 2012, ch. 339, § 7, p. 934.

STATUTORY NOTES

Repealed effective July 1, 2017. This section is repealed effective July 1, 2017, pursuant to S.L. 2012, ch. 339, § 10, at which time a new § 31-1901 is enacted.

Amendments.

The 2012 amendment, by ch. 339, inserted the second sentence.

Compiler's Notes.

For this section as effective July 1, 2017, see the following section, also numbered § 31-1901.

Section 16 of S.L. 2012, ch. 339 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

31-1901. Commissioners may issue funding and refunding bonds. [Effective July 1, 2017.] — The board of county commissioners of any county in this state may issue negotiable coupon bonds of their county for the purpose of paying, redeeming, funding or refunding the outstanding indebtedness of the county, whether the indebtedness exists as a warrant indebtedness or bonded indebtedness. All such bonds shall be in the form and shall be issued, sold or exchanged and redeemed in accordance with the provisions of chapter 2 of title 57, known as the "Municipal Bond Law" of the state of Idaho, except where different provision is made herein. Provided, that the authority to fund warrant indebtedness shall extend only to the funding of warrant indebtedness existing as of the second Monday in January, 1933, and providing further that all taxes and other revenues which but for the funding of warrants would have been lawfully applicable to the redemption of the warrants so funded shall, as and when collected, be apportioned to and placed in the sinking fund for the payment of the interest and retirement of the principal of such bonds. Bonds issued for the purpose of funding warrants shall bear interest payable semiannually as the board of county commissioners may determine.

History.

I.C., § 31-1901, as added by 2012, ch. 339, § 15, p. 934.

STATUTORY NOTES

Compiler's Notes.

For this section as effective until July 1, 2017, see the preceding section, also numbered § 31-1901.

Effective Dates.

Section 17 of S.L. 2012, ch. 339 makes the enactment of this section effective on July 1, 2017.

CHAPTER 20

COUNTY OFFICERS IN GENERAL

31-2002. Preliminary investigations and actions against county el ected officers — Duties of attorney general. — (1) Notwithstanding any provision of law to the contrary, the attorney general shall conduct a preliminary investigation of any allegation of a violation of state law, civil or criminal, against a county officer occupying an elective office for violation of state law in his official capacity.

(2) Upon completion of the preliminary investigation, the attorney general may:

(a) Issue a finding of no further action necessary;

(b) Prescribe training or other nonjudicial remedies; or

(c) Issue a finding that further investigation or prosecution is warranted, provided that the attorney general shall refer a recommendation for further investigation or prosecution to the county prosecutor who shall seek appointment of a special prosecutor. If the attorney general issues a finding that further investigation or prosecution is warranted against a county prosecutor, the attorney general shall retain the matter and act as special prosecutor.

(3) In furtherance of the duty to conduct investigations set forth in the provisions of this section, the attorney general shall have the authority to issue subpoenas for the production of documents or tangible things that may be relevant to such investigations.

(4) The provisions of this section shall not apply to any alleged violations of the open meetings law as codified in chapter 23, title 67, Idaho Code.

(5) For purposes of this section, a county officer occupying an elective office shall be deemed to have performed an act in his "official capacity" when such act takes place while the officer is working or claims to be working on behalf of his employer at his workplace or elsewhere, while the officer is at his workplace whether or not he is working at the time, involves the use of public property or equipment of any kind or involves the expenditure of public funds.

History.
I.C., § 31-2002, as added by 2014, ch. 280, § 1, p. 707.

STATUTORY NOTES

Cross References.
Attorney general, § 67-1401 et seq.

Prior Laws.
Former § 31-2002, Other county officers, which comprised R.S., § 2150; am. R.C., § 1973; compiled and reen. C.L., § 1973; C.S., § 3543; I.C.A., § 30-1501; am. 1959, ch. 221, § 10, p. 484; am. 1970, ch. 120, § 4, p. 284, was repealed by S.L. 1989, ch. 347, § 1.

31-2012. Application of campaign reporting law to certain county elections. — The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6630, Idaho Code, insofar as they relate to the reporting of campaign contributions and expenditures are hereby made applicable to all elections for county elected officers and countywide measures including countywide recalls in counties of the state, except that the clerk of the district court shall stand in place of the secretary of state.

History.
I.C., § 31-2012, as added by 1991, ch. 93, § 1, p. 210; am. 2005, ch. 254, § 4, p. 777; am. 2012, ch. 162, § 1, p. 437.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 162, inserted "and countywide measures including countywide recalls" near the middle of the section.

CHAPTER 22

SHERIFF

31-2202. Duties of sheriff. — The policy of the state of Idaho is that the primary duty of enforcing all penal provisions and statutes of the state is vested with the sheriff of each county as provided in section 31-2227, Idaho Code. The sheriff shall perform the following:

(1) Preserve the peace.

(2) Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense, unless otherwise provided by law.

(3) Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.

(4) Attend all courts, including magistrate's division of the district court when ordered by a district judge, at their respective terms held within his county, and obey the lawful orders and directions of the courts.

(5) Command the aid of as many inhabitants of the county as he may think necessary in the execution of these duties.

(6) Take charge of and keep the county jail and the prisoners therein.

(7) Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.

(8) Serve all process and notices in the manner prescribed by law.

(9) Certify under his hand upon process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

(10) Perform such other duties as are required of him by law.

(11) Keep a record of all stolen cars reported within his county, which record shall contain the name of the motor vehicle, the engine number thereof, a complete description of such vehicle and such other information as may aid in the identification of the stolen car. Such record shall be open to public inspection during office hours, and immediately upon receiving a report of a stolen car the sheriff shall prepare and forward a copy thereof to the director of the Idaho state police and he shall also notify the director of the Idaho state police of any and all cars recovered.

(12) At the specific request of the governor or his designated agent prevent the unauthorized importation of wild omnivores or carnivores capable of causing injury to people or their property.

(13) Work in his county with the Idaho state police in the following respects:

(a) Require all persons using the highways in the state to do so carefully, safely and with exercise of care for the persons, property and safety of others;

(b) Safeguard and protect the surface and other physical portions of the state highways;

(c) Enforce all of the laws of the state enacted for the identification, inspection and transportation of livestock and all laws of the state designed to prevent the theft of livestock;

(d) Regulate traffic on all highways and roads in the state; and respond to calls following wrecks and make investigations relative thereto;

(e) Use whatever force is necessary to protect the public from wild or domestic omnivores or carnivores in a manner that is consistent with 50 C.F.R. section 17.84(i).

(14) Work in his county with the Idaho transportation department to give examinations for and sell drivers' licenses and identification cards.

(15) Expeditiously and promptly investigate all cases involving missing children when such cases are reported to him.

History.

1863, p. 475, §§ 3-6; R.S., §§ 1871, 1888; am. and reen. R.C. & C.L., § 2024; C.S., § 3596; am. 1921, ch. 254, § 1, p. 546; I.C.A., § 30-1702; am. 1943, ch. 147, § 1, p. 293; am. 1951, ch. 183, § 18, p. 383; am. 1970, ch. 120, § 9, p. 284; am. 1985, ch. 149, § 1, p. 399; am. 1986, ch. 290, § 1, p. 732; am. 1989, ch. 14, § 1, p. 14; am. 1989, ch. 88, § 66, p. 151; am. 1998, ch. 110, § 2, p. 375; am. 2000, ch. 331, § 1, p. 1110; am. 2000, ch. 469, § 78, p. 1450; am. 2008, ch. 27, § 7, p. 45.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 27, corrected a subsection designation.

JUDICIAL DECISIONS

Authority of Sheriff.

County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners' statutory duties under §§ 20-622, 31-1503 do not encompass control of bail, which is a matter within the sheriff's authority under §§ 8-106, 19-817 and subsection (6) of this section. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

31-2219. Compensation for services to state. — When the sheriff or other officer is legally required to perform a service on behalf of the people of this state, which is not chargeable to his county or private person, his account and claim for compensation must be filed with the board of examiners, who shall consider and, if appropriate, approve and submit the same to the Idaho department of correction who shall pay the claim to the treasurer of the county of the sheriff or other officer who performed the service.

History.
1874, p. 543, § 47; R.S., § 1889; compiled and reen. R.C. & C.L., § 2041; C.S., § 3613; I.C.A., § 30-1719; am. 1984, ch. 79, § 2, p. 146; am. 2008, ch. 302, § 1, p. 842.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 302, rewrote the section, speeding the process through which sheriffs are compensated by the state for services rendered.

31-2227. Enforcement of penal laws — Primary responsibility. — (1) Irrespective of police powers vested by statute in state, county and municipal officers, and except where otherwise provided in Idaho Code, it is hereby declared to be the policy of the state of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties. When, in the judgment of such county officers, they need assistance from municipal peace officers within the county, they are authorized and directed to call for such assistance and local officers shall render assistance.

(2) When, in the judgment of such county officers, advice and/or assistance is needed which is not available in the county, the sheriff and/or the prosecuting attorney are directed to call upon the Idaho state police for such advice and assistance and the department shall render such cooperative service. Whenever in the opinion of the governor any peace officer of this state refuses to offer assistance when requested to do so, or refuses to perform any duty enjoined upon him by the penal statutes of this state, the governor shall direct the attorney general to commence action under chapter 41, title 19, Idaho Code, to remove such officer from office.

(3) When in the judgment of the governor the penal laws of this state are not being enforced as written, in any county, or counties, in this state, he may direct the director of the Idaho state police to act independently of the sheriff and prosecuting attorney in such county, or counties, to execute and enforce such penal laws. In such an instance, the attorney general shall exclusively exercise all duties, rights and responsibilities of the prosecuting attorney.

History.
1951, ch. 196, § 1, p. 420; am. 1974, ch. 27, § 77, p. 811; am. 1989, ch. 14, § 6, p. 14; am. 1998, ch. 246, § 1, p. 808; am. 2000, ch. 469, § 79, p. 1450; am. 2014, ch. 280, § 2, p. 707.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 280, added the subsection designations and, in subsection (1), inserted "and except where otherwise provided in Idaho Code" in the first sentence and inserted "assistance" following "call for such" in the last sentence.

31-2229. Search and rescue. — (1) For the purpose of this section:
(a) "Aerial search" means a response by the bureau of homeland security and the Idaho transportation department's division of aeronautics to a missing or overdue aircraft or airman.
(b) "Rescue" means a response by the sheriff to recover lost, missing, injured, impaired or incapacitated persons in imminent danger of injury or death.
(c) "Search" means a response by the sheriff to locate an overdue, missing or lost person.
(2) The sheriff of each county shall:
(a) Be the official responsible for command of all search and rescue operations within the county;
(b) Prepare and keep current a plan to command the search and rescue capabilities and resources available within the county.
(3) All aerial search assets shall be under the coordination of the Idaho transportation department's division of aeronautics. The ground aspects of the search and rescue of lost aircraft and airmen shall be under the supervision of the county sheriff, in coordination with the chief of the bureau of homeland security and the administrator of the division of aeronautics.
(4) Nothing in subsection (2) of this section shall apply to search and rescue operations within the incorporated limits of any city when the city performs such service.
(5) Nothing in subsection (2) of this section shall apply to the rescue of entrapped or injured persons where their location is known to be within a fire district where the fire district performs such service.
(6) Nothing contained in subsection (2) of this section shall apply to the removal of entrapped or injured persons where the person's location is known to a local EMS agency licensed by the state of Idaho.

History.
I.C., § 31-2229, as added by 2008, ch. 39, § 2, p. 94.

CHAPTER 23

COUNTY AUDITOR

31-2306. Joint statement by auditor and treasurer — Publication of summary. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised R.S., § 2010; am. 1895, p. 13, § 1; reen. 1899, p. 233, § 1; reen. R.C. & C.L., § 2057; C.S., § 3629; I.C.A., § 30-1806, was repealed by S.L. 2007, ch. 99, § 1. See § 31-2307.

31-2307. Annual statement of financial condition of county. [Repealed.]

Repealed by S.L. 2014, ch. 133, § 1, effective July 1, 2014. For comparable provisions, see §§ 31-1611 and 67-450B.

History.
I.C., § 31-2307, as added by 1901, p. 294, § 1; reen. R.C. & C.L., § 2058; C.S., § 3630; I.C.A., § 30-1807; am. 1976, ch. 45, § 23, p. 122; am. 1989, ch. 92, § 1, p. 217; am. 1994, ch. 180, § 44, p. 420; am. 2007, ch. 99, § 2, p. 302; am. 2008, ch. 37, § 2, p. 89.

CHAPTER 26

PROSECUTING ATTORNEY

31-2604. Duties of prosecuting attorney.

JUDICIAL DECISIONS

ANALYSIS

Duties.
Public record.

Duties.
When defendant agreed to plead guilty to harboring and protecting a felon, the State agreed to recommend probation with no prison time; after the district court sentenced defendant to five years in prison, the state violated the plea agreement at the hearing on defendant's Rule 35 motion by objecting to a reduction of sentence. The prosecutor was obligated to represent the people of the State of Idaho in criminal proceedings, and not to advocate for the victims or for the department of probation and parole. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

Public Record.
A contract executed by a county, a county prosecuting attorney, and a city, under which the prosecuting attorney would perform prosecutorial services for the city using county employees, is a public record subject to disclosure under the Public Records Act, § 9-337 et seq. Henry v. Taylor, 152 Idaho 155, 267 P.3d 1270 (2012).

CHAPTER 28

CORONER

31-2802. Burial or cremation of unclaimed bodies. — When no person takes charge of the body of the deceased within fourteen (14) days of death, the coroner shall cause the body to be decently interred or cremated;

and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial or cremation, the expenses are a legal charge against the county pursuant to the provisions of section 31-3412, Idaho Code.

History.
1874, p. 566, § 22; am. R.S., § 2081; reen. R.C. & C.L., § 2097; C.S., § 3676; I.C.A., § 30-2302; am. 2002, ch. 57, § 1, p. 126; am. 2012, ch. 208, § 1, p. 562.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 208, inserted "or cremation" in the section heading and twice in the text and inserted "within fourteen (14) days of death" and "pursuant to the provisions of section 31-3412, Idaho Code" in the text.

31-2810. Continuing education requirements. — After January 1, 2010, each county coroner shall complete twenty-four (24) hours of continuing education on a biennial calendar basis. The Idaho state association of county coroners shall either sponsor or provide courses pursuant to this section and monitor this requirement.

History.
I.C., § 31-2810, as added by 2010, ch. 355, § 3, p. 932.

STATUTORY NOTES

Compiler's Notes.
S.L. 2010, Chapter 355 became law without the signature of the governor.

CHAPTER 29

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SECTION.

OFFICIAL COMMENT

PREFATORY NOTE

The status of electronic information technology has progressed rapidly in recent years. Innovations in software, hardware, communications technology and security protocols have made it technically feasible to create, sign and transmit real estate transactions electronically.

However, approaching the end of the 20th Century, various state and federal laws limited the enforceability of electronic documents. In response, the Uniform Electronic Transactions Act (UETA) was approved by the

National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. As of October 1, 2004, UETA had been adopted in 46 states, the District of Columbia, and the U.S. Virgin Islands. The federal Electronic Signatures in Global and National Commerce Act (E-Sign) was also adopted in 2000. The two acts give legal effect to real estate transactions that are executed electronically and allow them to be enforced between the parties to the transaction.

Even though documents resulting from electronic transactions are valid and enforceable between the parties, there is uncertainty and confusion about whether those electronic documents may be recorded in the various local land records offices in the several states. Legacy laws and regulations in many states purport to limit recordable documents to ones that are in writing or on paper or require that they be originals. Other laws and regulations require signatures to be in writing and acknowledgements to be signed. Being electronic and not written on paper, being an electronic version of an original paper document, or having an electronic signature and acknowledgement instead of handwritten ones, an electronic document might not be recordable under the laws of these states. The continuing application of these legacy laws and regulations remain uncertain (see Op. Cal. Atty. Gen. No. 02-112 (Sept. 4, 2002)).

Despite these uncertainties, recorders in approximately 40 counties in several states began recording electronic documents. These efforts depend, however, on the initiatives of individual recorders and the opportunities available under the laws of those states. They are piecemeal and offer only limited interoperability among the recording venues and across state lines. They do not provide a uniform legal structure for the acceptance and processing of electronic documents.

In response, a few states have convened study committees or task forces to consider the question of recording electronic documents (see Report of Iowa State Bar Ass'n, Real Estate Modernization Comm., draft of Ch. 558B — Iowa Electronic Recording Act (2001); Conn. Law Revision Comm., An Act Establishing the Connecticut Real Property Electronic Recording System (Conn. Gen Assembly, Judiciary Comm., Raised Bill No. 5664, 2004)). In 2002, a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recording Act. The Committee's decision followed a recommendation of the NCCUSL Committee on Scope and Program. Their actions were in recognition of a strong recommendation from the Joint Editorial Board on Uniform Real Property Acts that a uniform act be drafted.

The Uniform Real Property Electronic Recording Act was drafted to remove any doubt about the authority of the recorder to receive and record documents and information in electronic form. Its fundamental principle is that any requirements of state law describing or requiring that a document be an original, on paper, or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgement. The act specifically authorizes a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents.

If the recorder elects to accept electronic documents, the recorder must also comply with certain other requirements set forth in the act. In addition, the act charges an electronic recording commission or an existing state agency with the responsibility of implementing the act and adopting standards regarding the receipt, recording, and retrieval of electronic documents. The Commission or agency is directed to adopt those standards with a vision toward fostering intra- and interstate harmony and uniformity in electronic recording processes.

This act does not state the means of funding the establishment or operation of an electronic recording system in the various recording venues. No single approach is inherently the best for funding electronic recording systems. This is especially true because of the range of taxation systems and cultures existing in the various states and recording venues and the diversity of the various states and recording venues in terms of population and resources. In fact, the best system for any state or recording venue might involve a combination of approaches.

The establishment, and perhaps the operation, of an electronic recording system might be funded from the general taxes and revenues of the state or county. Because of the relatively large "front end" expenses needed to set up an electronic recording system, this approach might be very appropriate for that purpose. Whether the funding is to be by the county or the state is an issue that should be resolved prior to the passage of this act. A related question is whether the funding should cover the entire cost of setting up the system or only part of it with the remaining costs to be paid by recording and searching fees dedicated to the establishment of the electronic recording system.

31-2901. Short title. — This chapter shall be known and may be cited as the "Uniform Real Property Electronic Recording Act."

History.
I.C., § 31-2901, as added by 2007, ch. 63, § 1, p. 155.

OFFICIAL COMMENT

This act applies to the recording of documents in the land records office maintained by a recorder. It applies both to the filing of, and the searching for, documents in the recorder's office by whatever term or terms those functions and offices are known locally.

31-2902. Definitions. — In this chapter:

(1) "Document" means information that is:

(a) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) Eligible to be recorded in the land records maintained by the recorder.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(3) "Electronic document" means a document that is received by the recorder in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

History.
I.C., § 31-2902, as added by 2007, ch. 63, § 1, p. 155.

OFFICIAL COMMENT

(1) "Document." A document consists of information stored on a medium, whether the medium be tangible or electronic, provided that the information is retrievable in a perceivable form. The traditional tangible medium has been paper on which information is inscribed by writing, typing, printing or similar means. It is perceivable by reading it directly from the paper on which it is inscribed. An electronic medium may be one on which information is stored magnetically and from which it may be retrieved and read indirectly on a computer monitor or a paper printout.

While a document recorded in a land records office will usually contain information affecting real property, it need not necessarily be so limited. It applies to any document that is recorded in the land records office maintained by the recorder. Deeds, grants of easements, and mortgages are documents subject to this act. Similarly, certificates and affidavits not directly affecting real property may be documents under this act if state law provides these documents are to be recorded in the land records office.

The definition of a document in this act is derived from the definition of the term "record" as contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In the terms of that act, a document is a record that is eligible to be recorded in the land records

maintained by the recorder. In selecting the defined term "document" for use throughout this act, an explicit decision was made not to use "record" as a defined term. The term "record" has a different meaning in real estate recording law and practice than it has in UETA. If the term "record" were used generally in this act, it might lead to confusion and misinterpretation.

In UETA, the term "record" refers to information on a tangible or electronic medium as does the term "document" in this act. In this act, however, depending on syntax, the term "record" and its variations can have several meanings, all of which deal with document storage and not the information itself. For example, this act deals with the recording process through which a person can record a document. The government officer who oversees the land records office is the recorder. These terms are so ingrained in the lexicon of real estate recording law and practice that it would not be productive to attempt to change them by this act.

(2) "Electronic." The term "electronic" refers to the use of electrical, digital, magnetic, wireless, optical, electromagnetic and similar technologies. It is a descriptive term meant to include all technologies involving electronic processes. The listing of specific technologies is not intended to be a limiting one. For example, biometric identification technologies would be included if they affect communication and storage of information by electronic means. As electronic technologies expand and include other competencies, those competencies should also be included under this definition.

The definition of the term "electronic" in this act has the same meaning as it has in UETA § 2(5).

(3) "Electronic document." An "electronic document" is a "document" that is in an "electronic" form. Both of these terms are previously defined. However, this definition adds an additional requirement not specifically stated in the individual definitions. In order to be an "electronic document" the document must be received by the recorder in an "electronic" form. The character of a document as "electronic" or "paper" will be determined at the moment it is received by the recorder.

Even though a document may have an existence in an "electronic" form prior or subsequent to being received by the recorder it might not be an "electronic document" under this act. For example, the document may have been created by an electronic process or have existed in an electronic form before being converted to, and received by the recorder in, a paper form. Thus, a document prepared on a computer by means of a word processing program may have been created electronically and may still exist electronically. If, however, the document is printed and submitted to the recorder on paper, the submitted document is not an electronic document. Similarly, after arriving in the recorder's office in a paper form, the document may be converted to an electronic form prior to, or as part of, the recording process. The paper document does not become an electronic document because of the post-receipt conversion. (For a definition of the term "paper document," see § 4(a) [§ 31-2904(1)].)

By comparison, a document received by the recorder in an electronic form, but subsequently converted to a paper form, will be considered to be an electronic document. For example, if a document is received electronically and then printed in a paper form in the recorder's office prior to storage, it is, nonetheless, an electronic document. Thus, a document received by the process commonly known as a facsimile or a FAX, is an electronic document. Issues common to electronic documents, such as security and integrity, also relate to a facsimile or FAX document.

In many cases a document may have originally been executed in a paper form with "wet signatures" and subsequently imaged and converted into an electronic format. This act provides that, if such a converted document is received by the recorder in an electronic format, it will be considered to be an electronic document and may be recorded. (See § 3(a) [§ 31-2903(1)].)

This act does not state or limit the type of electronic documents that may be accepted by the recorder. Nor does it state the type of electronic signatures that are permissible. Those matters are subject to the standards adopted by the state electronic recording commission or state agency pursuant to § 5 [§ 31-2905].

This act applies only to documents that are received by the recorder in an electronic form and enables those documents to be recorded. The recordability of documents not received by the recorder in an electronic form continues to depend on other state law.

(4) "Electronic signature." The term "electronic signature" is based on the definition of that term in UETA § 2(8). However, this definition uses the word "document" instead of "record" to identify the instrument being signed. (See generally paragraph 1, above, for a discussion of the reasons).

(5) "Person." The definition of a "person" is the standard definition for that term used in acts adopted by the National Conference of Commissioners on Uniform State Laws. It includes individuals, associations of individuals, and corporate and governmental entities.

(6) [None in original comments.]

(7) "State." The word "state" includes any state of the United States, the District of Columbia, the United States Virgin Islands,

or any territory or insular possession subject to the jurisdiction of the United States.

31-2903. Validity of electronic documents. — (1) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

(2) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(3) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

History.
I.C., § 31-2903, as added by 2007, ch. 63, § 1, p. 155.

OFFICIAL COMMENT

(a) Subsection (a)[(1)] states the basic principle of this act — if a document would be recordable in a paper format, an electronic document with the same content and meeting the requirements of this act is also recordable. Any reference in a statute, regulation, or standard to a document as being on paper or a similar tangible medium in order to be recorded is superseded by this act. Similarly any statute, regulation, or standard that specifies that a document must be in writing in order to be recorded is also overruled by this act. Furthermore, since any paper-specific requirement such as the size of the paper or the color of the ink used for the document is inapplicable to an electronic document, those requirements do not prohibit or limit the recording of electronic documents.

This subsection also provides that any stipulation of state law requiring that a document be an original document is satisfied by an electronic document meeting the requirements of this act. For example, this section acknowledges that one form of electronic document is created by making an electronic duplicate of an original paper document. The duplicate is an electronic "picture" of the original document with all of its signatures and verifications. Under some existing state laws, the electronic duplicate may be considered to be a copy of the original paper document and not the original itself. The laws of the state may also provide that a copy of a document may not be recorded. This act corrects that circumstance and allows the electronic document containing the "picture" of the original document to be recorded. Of course, in order to be valid, the original paper document must be executed in accordance with law, including a signature and verification.

(b) Subsection (b)[(2)] provides that any statute, regulation, or standard requiring that a document be signed in order to be recorded is satisfied by an electronic signature attached to an electronic document. The provisions of UETA and the federal Electronic Signatures in Global and National Commerce Act (E-Sign) [15 U.S.C.S. § 7001 et seq.] provide that an electronic signature is not an impediment to the enforceability of an electronic document between the parties to the transaction. Similarly, this section provides that an electronic signature is not an impediment to the recording of the document.

(c) This section provides that any statute, regulation, or standard requiring that a notarization, acknowledgement, verification, witnessing, or taking of an oath be done on paper or similar tangible medium, that it be done in writing, or that it be signed, is satisfied by an electronic signature that is attached to, or logically associated with, the electronic document. It permits a notary public or other authorized person to act electronically without the need to do so on paper.

It also provides that any statute, regulation, or standard that requires a personal or corporate stamp, impression, or seal is satisfied by an electronic signature. These physical

indicia are inapplicable to a fully electronic document. Thus, the notarial stamp or impression that is required under the laws of some states is not required for an electronic notarization under this act. Nor is there a need for a corporate stamp or impression as would otherwise be required under the laws of some states to verify the action of a corporate officer. Nevertheless, this act requires that the information that would otherwise be contained in the stamp, impression, or seal must be attached to, or logically associated with, the document or signature in an electronic fashion.

31-2904. Recording of documents. — (1) In this section, "paper document" means a document that is received by the recorder in a form that is not electronic.

(2) A recorder:

(a) Who implements any of the functions listed in this section shall do so in compliance with standards established by the electronic recording commission, as created in section 31-2905, Idaho Code;

(b) May receive, index, store, archive and transmit electronic documents;

(c) May provide for access to, and for search and retrieval of, documents and information by electronic means;

(d) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(e) May convert paper documents accepted for recording into electronic form;

(f) May convert into electronic form information recorded before the recorder began to record electronic documents;

(g) May accept electronically any fee that the recorder is authorized to collect; and

(h) May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

History.

I.C., § 31-2904, as added by 2007, ch. 63, § 1, p. 155.

OFFICIAL COMMENT

(a) A "paper document" is one that is received by the recorder in a form that is not "electronic." Despite the use of the word "paper," this document form is not limited to documents on a paper medium; the use of the word "paper" is merely a convenience. It applies to any non-electronic document that the recorder is authorized to accept.

Just as with the definition of an "electronic document" in section 2 [§ 31-2902] of this act, the moment at which the character of the document will be determined is the moment it is received by the recorder. If a document is received by the recorder in a non-electronic form, it is a "paper" document regardless of whether it has a prior or subsequent existence as an electronic document.

(b) Subsection (b) [(2)] sets forth specific required or elective functions that apply to the recording of documents.

(1) With the exception of paragraphs (1) [(a)] and (4) [(d)], implementation of any functions described in subsection (b) [(2)] is optional and a decision to implement one or more of them is to be made by the recorder. The act does not require that a recorder implement any or all of those functions. It merely allows each recorder to implement them when and if the recorder decides to proceed with electronic recording.

However, under paragraph (1) [(a)] if a recorder does elect to implement any of the functions described in this section, the recorder must do so in accordance with the standards established by the electronic re-

cording commission or the state agency. All aspects of the functions described in this subsection are subject to the standards of the Commission or agency.

(2) Paragraph (2) [(b)] provides that the recorder may choose to implement electronic recording functions. Recording functions are varied and deal with obtaining and storing of documents in a recording system. Under this paragraph, the recorder may elect to receive electronic documents. The recorder may store those electronic documents, or the information contained in them, and create an index of the documents or information. The recorder may also transmit electronic documents and communications to the recording party or to other parties. Finally, the recorder may archive the electronic documents or the information in them as well as the index in order to preserve and protect them. This is an election to be made by the recorder that is separate from the decision to provide electronic searching, as described in paragraph (3) [(c)].

Since this act also applies to "Torrens" title registration systems, a recorder who operates a title registration system may choose to implement the functions of receiving, indexing, storing, archiving, and transmitting electronic documents for the title registration system.

(3) Paragraph (3) [(c)] provides that the recorder may choose to implement electronic search and retrieval functions. Searching and retrieval functions include any process by which a title searcher obtains information from the land records system. The paragraph allows a recorder to authorize persons to access documents or their information, including index information, electronically. In so doing, the recorder may allow the accessing party to search the index and the stored documents or information electronically and to retrieve them in an electronic format. This is an election to be made by the recorder that is separate from the decision to record electronic documents, as described in paragraph (2) [(b)]. A recorder who operates a "Torrens" title registration system also may choose to implement the functions of accessing, searching, and retrieving documents or information in the title registration system.

(4) This act does not require that persons engaging in real estate transactions use electronic documents in order to have their documents recorded. It merely permits the recorder to accept electronic documents if they are presented electronically. Economics, availability of technology, and human nature suggest that not everyone will begin to use electronic real estate documents immediately. It will likely be some time before the use of electronic documents becomes dominant and perhaps well beyond that before paper documents disappear altogether from the conveyancing process. In recognition of that fact, paragraph (4) [(d)] requires the recorder to continue to accept paper documents even after establishing an electronic recording system. This is a mandatory and not an elective provision.

This paragraph also provides that the recorder must index the paper documents together with electronic documents as part of a single indexing system. This will enable a title examiner to make a single search of one index for the purpose of ascertaining all relevant instruments that were recorded after the initiation of electronic recording. It avoids the inefficient and costly process of maintaining and searching two separate indexing systems — one for electronic documents and one for paper documents.

Efficiency also suggests that the unified index would be an electronic one. It would be more efficient to store the index information from paper documents in an electronic index than to convert and store the index information from electronic documents in a paper index system. Electronic index information can be sorted and managed more easily and efficiently than paper index information. In addition, an electronic index can be searched more quickly and without the searcher's physical presence in the recorder's office. However, the act does not require the index chosen by the recorder to be an electronic one.

(5) Paragraphs (5) [(e)] and (6) [(f)] relate to the conversion and storage of the text or information contained in paper documents in an electronic form. It does not concern the index information that is derived from those paper documents. The treatment of index information is described in the paragraph (4) [(d)].

Paragraph (5) [(e)] relates to the conversion of "new" paper documents received by the recorder after the implementation of an electronic recording system. It does not require that such newly-received paper documents be converted and stored in an electronic form. It does, however, permit the recorder to make a conversion of those paper documents into an electronic form and store them with electronic documents received by the recorder. If the paper documents are not converted into an electronic form, the recorder must continue to store them and, as public documents, the recorder must continue to provide a process for accessing them.

If the recorder does not convert "new" paper documents into an electronic form, the usefulness and efficiency of the electronic recording system may be limited. A title examiner will have to obtain physical access to the paper document information in traditional ways. Since electronic documents are stored electronically, the examiner will have to access

two different storage systems — one for paper documents and one for electronic documents.

(6) Paragraph (6) [(f)] relates to the conversion of information from "old" paper documents recorded prior to the implementation of an electronic recording system. As with newly-received paper documents, the act does not require the recorder to convert previously-recorded information into an electronic form. Such a conversion is, however, permitted under the act.

Dealing with "old" document information is more challenging than dealing with "new" documents simply because of the potentially large expenditure of time and money needed to convert a significant volume of paper information extending over many past years into an electronic form. The time period over which a fully-effective conversion would extend probably spans a period of forty to sixty or more years, depending on the customary period of search in the jurisdiction. Without the conversion, the usefulness and efficiency of the electronic recording system is limited, at least until the passage of a period after the adoption of the act that is equal to the customary period of search.

(7) Paragraph (7) [(g)] provides that any fee or tax that is collected by the recorder may be collected through an electronic payment system. Without a means of paying the applicable fees and taxes electronically, the achievement of a speedy and efficient electronic recording system would not be possible. Although the document could be submitted electronically, the fee would have to be paid by traditional means. The effective completion of the recording would be delayed until that payment is received by the recorder.

The nature and operation of the electronic payment system is not specified. The selection is subject to standards set by the Electronic Recording Commission or state agency and the choice of the recorder. Among others, the alternatives might include a subscription service with a regular billing system, a prepayment system with recording and access charges applied against a deposited amount, or a payment per individual service system.

(8) Commonly, before a recorder may accept a document for recording it must be approved by one or more other offices in order to assure compliance with the other office's requirements. The person submitting the document may also be required to pay fees or taxes to the other office or offices. If the prior approval and the fee or tax paying processes are not conjoined with the electronic recording process, it will not be possible to effectuate the speedy electronic recording envisioned by this act.

For example, a document may first need to be submitted to the county assessor or treasurer to determine whether prior real estate taxes have been paid or whether current ones are due. Under current practice that submission and approval might have to be accomplished in a physical process independent of the electronic recording process. If a tax or fee is due, that sum might also have to be paid by check or other non-electronic process to the treasurer. Procedures such as these will delay the electronic recording process and will limit the achievement of a speedy, efficient electronic recording system.

Paragraph (8) [(h)] permits and encourages the recorder to enter into agreements with other county and state offices for the purpose of implementing processes that will allow the simultaneous satisfaction of all conditions precedent to recording and the payment of all fees and taxes in a single transaction. Any fees and taxes paid by the recording party will be allocated among the recorder and the other offices in accordance with their agreements.

31-2905. Commission created — Officers — Standards. — (1) An electronic recording commission consisting of seven (7) members appointed by the governor is hereby created in the office of the secretary of state to adopt standards to implement this chapter. A majority of the members of the commission must be recorders, and at least one (1) member shall be a representative from the title insurance industry. The governor shall appoint three (3) members, each for a term of two (2) years; two (2) members, each for a term of three (3) years; and two (2) members each for a term of four (4) years. Thereafter, the term of office shall be four (4) years. Vacancies in any unexpired term shall be filled by appointment by the governor for the remainder of the unexpired term.

(2) The commission shall annually elect a chairman and a secretary-treasurer from among its members. The commission shall meet regularly at least once each year, and at such other times as called by the chairman or when requested by two (2) or more members of the commission.

(3) To keep the standards and practices of recorders in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this uniform act and to keep the technology used by recorders in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this uniform act, the electronic recording commission, so far as is consistent with the purposes, policies and provisions of this chapter, shall adopt, amend or repeal standards, taking into account the following considerations:

(a) Standards and practices of other jurisdictions;

(b) The most recent standards promulgated by national standard-setting bodies, such as the property records industry association;

(c) The views of interested persons and governmental officials and entities;

(d) The needs of counties of varying size, population and resources; and

(e) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

(4) The commissioners shall appoint one (1) of their members to serve as a liaison to the property records industry association (PRIA) in order to stay informed of technological changes relative to electronic recordings and the standards of other jurisdictions.

History.

I.C., § 31-2905, as added by 2007, ch. 63, § 1, p. 155; am. 2011, ch. 127, § 1, p. 353.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 127, inserted "in the office of the secretary of state" in the first sentence in subsection (1) and added subsection (4).

Compiler's Notes.

For more on the property records industry association, see *http://www.pria.us*.

The letters "PRIA" enclosed in parentheses so appeared in the law as enacted.

OFFICIAL COMMENT

(a) This section provides two alternatives for designating the entity that will adopt standards to implement this act.

Alternative A creates a state electronic recording commission and provides for its general composition. The exact size of the board is to be determined by the legislature. The appointment of the commissioners is to be made by the governor or another state official or governmental body determined by the legislature.

Under Alternative A, the majority of the members of the commission must be recorders. Recorders, by the fact that the standards adopted by the electronic recording commission will affect the operation of their offices, have a professional interest in generating efficient, functional standards. If the recorders are appointed from sufficiently diverse recording venues, they can also provide valuable input as to the needs of recording districts of varying size, population and resources, as described further in subsection (b).

Alternative B delegates the duty to adopt standards to implement this act to an existing state agency. In some states this oversight of the recording process, and in some cases the electronic recording process, has already been delegated to an existing state agency. In like fashion, some state legislatures may wish to delegate these duties to an existing state agency instead of creating a new commission as is directed in Alternative A.

If the state agency has oversight of many diverse functions, it might prove useful for the agency to establish a subdivision to implement and adopt standards for this act. The agency or subdivision might also wish to establish a regular process to obtain advice

from persons with expertise in the area of recordings, particularly in electronic recordings.

(b) The electronic recording commission or state agency is directed to adopt standards to implement the provisions of this act. As provided in section 4 [§ 31-2904], recorders implementing any of the functions of this act must comply with those standards.

One of the objectives of this act is to facilitate the efficient use of electronic recording within the state and among the various adopting states. This subsection directs the electronic recording commission or state agency to seek to keep the standards and practices of the recording offices in states using electronic recording in harmony and uniformity with each other. Ease of user access and interoperability and the promotion of interstate commerce depend highly on a similarity of standards and operating processes among the various recording offices. However, differences in operating processes and their governing standards may be justified based on legitimate differences that exist from venue to venue. The commission is not required to adopt the same standards and practices that exist in other states, but must give them serious consideration.

When adopting, amending or repealing standards the commission or agency must consider the following factors:

(1) the standards and practices of other states adopting this uniform act or a substantially similar one. In many situations, electronic recording commissions or state agencies of other states may have already considered the same issue. Their research and subsequent experiences may prove very helpful to the commission or state agency in making its decision.

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association (PRIA). National standard-setting organizations such as PRIA will likely have considered the issue that is now before the commission or agency and have developed a protocol or standard to deal with it. Furthermore, since these bodies are national in scope, they will likely already have considered the needs of recording districts of varying size, population and resources when promulgating their standards.

(3) the views of interested parties. Among others, these persons should include county recorders and potential users of the electronic recording system such as real estate attorneys, mortgage lenders, representatives from the title and escrow industries, real estate brokers, and notaries public. It must also consider the views of governmental offices that may interact with the recording offices, such as clerks of court, taxing authorities, and the office of the secretary of state. Also included might be potential suppliers of hardware, software and services for electronic recording systems.

(4) the needs of counties of varying size, population and resources. Because most states are quite diverse in the size, population and resources of their recording venues, it is important that the electronic recording commission or state agency consider all of their needs. Standards that are designed only for large, populous and well-funded recording districts may not promote the development of electronic recording in smaller, less-populous and not-as-well funded recording districts. This subsection recognizes that the standards should promote the overall good of the entire state and not just the good of certain types of recording venues. Thus, the commission is advised to consider the needs of the entire spectrum of recording districts.

(5) information security for electronic documents. When considering the adoption of standards, the commission or state agency is directed to consider a number of security concerns.

The authenticity of a documents stored in any recording system is of utmost importance. If forged or invalid documents are accepted for recording, landowners and those depending on their titles can be seriously affected. Thus, the commission or state agency is directed to consider standards that would protect an electronic recording system from accepting and recording documents that are not authentic and genuine. Furthermore, even if an electronic document is authentic in its origin, it may be possible to intercept it in transmission and change its content. Such a change could cause problems equally problematic as those caused by an originally forged document. Thus, the commission or state agency is directed to consider standards that would protect documents from tampering and inaccuracies caused during transmission.

The subsection also directs the commission or state agency to consider standards for the proper preservation of electronic documents once they are in the electronic recording system. If an unauthorized person were to be able to "hack" or enter the electronic recording system, that person could cause considerable damage and injury to the records and persons having an interest in the affected land. Thus, the commission or state agency is directed to consider standards protecting the electronic land records system from unauthorized intrusion and tampering. Finally, the subsection directs the commission or state agency to consider adequate standards for the preservation of electronic documents. If there should only be one copy of the electronic land records and it is destroyed by an electronic or physical

catastrophe, the security of the land records system would be seriously impaired. Thus, the commission or state agency should consider the means and methodology of preserving and replicating the electronic land records so that the recorder can recover from such a catastrophe with no loss of information.

31-2906. Uniformity of application and construction. — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
I.C., § 31-2906, as added by 2007, ch. 63, § 1, p. 155.

OFFICIAL COMMENT

This section recites the importance of uniformity among the adopting states when applying and construing the act. It is more general than the uniformity stated in section 5 [§ 31-2905] for the electronic recording commission or state agency when implementing or adopting standards. This section seeks uniformity in all situations when the application or interpretation of the act itself is considered or under review.

31-2907. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

History.
I.C., § 31-2907, as added by 2007, ch. 63, § 1, p. 155.

STATUTORY NOTES

Federal References.
Section 101(c) of the federal electronic signatures in global and national commerce act, referred to in this section, is codified as 15 U.S.C.S. § 7001(c). Section 103(b) of that same act is codified as 15 U.S.C.S. § 7003(b).

OFFICIAL COMMENT

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

CHAPTER 31

SALARIES OF OFFICERS

31-3113. Contracted duties of prosecuting attorneys with cities.

JUDICIAL DECISIONS

Public Record.
A contract executed by a county, a county prosecuting attorney, and a city, under which the prosecuting attorney would perform

prosecutorial services for the city using county employees, is a public record subject to disclosure under the Public Records Act, § 9-337 et seq. Henry v. Taylor, 152 Idaho 155, 267 P.3d 1270 (2012).

CHAPTER 32

FEES

31-3201. Clerk of district court — Fees. — (1) The clerk of the district court shall lawfully charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law:

For filing and docketing abstract or transcript of judgment from another court $2.00

For issuing execution upon an abstract or transcript of judgment and filing same on return $2.00

For recording execution issued upon abstract or transcript of judgment, per page $2.00

For taking affidavits, including jurat $1.00

For taking acknowledgments, including seal $1.00

For filing and indexing designation of agent of foreign corporation

For filing and indexing notarial statement $2.00

For making copy of any file or record, by the clerk, the clerk shall charge and receive, per page $1.00

For comparing and conforming a prepared copy of any file or record, the clerk shall charge and receive, per page ..... $.50

For certifying the same an additional fee for certificate and seal .. $1.00

For all services not herein enumerated, and of him lawfully required, the clerk of the district court shall demand and receive such fees as are herein allowed for similar services.

(2) All fees collected under the provisions of this section shall be paid over to the county treasurer, at the same time and in the same manner as other fees.

(3) In addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect ten dollars ($10.00) as an administrative surcharge fee on each criminal case, and five dollars ($5.00) on each infraction to be paid over to the county treasurer at the same time and in the same manner as other fees, for the support of the county justice fund, or the current expense fund if no county justice fund has been established, and shall collect ten dollars ($10.00) as an administrative surcharge fee on each civil case, including each appeal, to be paid over to the county treasurer for the support of the county court facilities fund, or to the district court fund if no county court facilities fund has been established.

(4) Provided further, an additional handling fee of two dollars ($2.00) shall be imposed on each monthly installment of criminal or infraction fines, forfeitures, and other costs paid on a monthly basis.

(5) Provided further, in addition to all other fines, forfeitures and costs levied by the court, the clerk of the district court shall collect ten dollars ($10.00) as a court technology fee on each criminal and infraction offense to be paid over to the county treasurer who shall, within five (5) days after the end of the month, pay such fee to the state treasurer for deposit into the court technology fund.

History.

1890-1891, p. 174, § 1; reen. 1899, p. 116, § 1; am. R.C., § 2121; am. 1909, p. 22, § 1; am. 1917, ch. 36, § 5, p. 83; compiled and reen. C.L., § 2121; C.S., § 3702; am. 1931, ch. 217, § 1, p. 422; I.C.A., § 30-2701; am. 1937, ch. 88, § 2, p. 117; am. 1957, ch. 242, § 1, p. 602; am. 1963, ch. 169, § 1, p. 489; am. 1969, ch. 139, § 1, p. 427; am. 1976, ch. 281, § 2, p. 962; am. 1979, ch. 219, § 1, p. 607; am. 1986, ch. 103, § 1, p. 290; am. 1990, ch. 216, § 2, p. 579; am. 1994, ch. 208, § 2, p. 656; am. 1997, ch. 28, § 2, p. 48; am. 1997, ch. 227, § 1, p. 664; am. 2005, ch. 240, § 2, p. 743; am. 2014, ch. 190, § 5, p. 506.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 190, in subsection (5), substituted "a court technology fee" for "an Idaho Statewide Trial Court Automated Records System (ISTARS) technology fee" near the middle and "court technology fund" for "ISTARS technology fund" at the end.

JUDICIAL DECISIONS

Reimbursement.

District court did not have jurisdiction over reimbursement of various funds defendant had paid related to his conviction once that conviction was vacated. Even assuming the district court had subject matter jurisdiction, it lacked personal jurisdiction over the nonparty agencies that collected, disbursed, or retained the monies paid. State v. Peterson, 153 Idaho 157, 280 P.3d 184 (Ct. App. 2012).

31-3201A. Court fees. — The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and by section 31-3201, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law:

(1) Civil cases. A fee of one hundred seventy-five dollars ($175) for filing a civil case of any type in the district court, except for those cases to be assigned to the magistrate's division of the district court for which the fee shall be one hundred twenty dollars ($120), with the following exceptions:

(a) The fee for small claims shall be as provided in section 1-2303, Idaho Code;

(b) No filing fee shall be charged in the following types of cases:

(i) Cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;

(ii) Cases brought under the juvenile corrections act;

(iii) Cases brought under the child protective act;

(iv) Demands for bond before a personal representative is appointed in probate;

(v) Petitions for sterilization;
(vi) Petitions for judicial consent to abortion;
(vii) Registration of trusts and renunciations;
(viii) Petitions for leave to compromise the disputed claim of a minor;
(ix) Petitions for a civil protection order or to enforce a foreign civil protection order pursuant to chapter 63, title 39, Idaho Code;
(x) Objections to the appointment of a guardian filed by a minor or an incapacitated person;
(xi) Proceedings to suspend a license for nonpayment of child support pursuant to section 7-1405, Idaho Code;
(xii) Proceedings under the uniform post-conviction procedure act as provided in chapter 49, title 19, Idaho Code;
(xiii) Filings of a custody decree from another state;
(xiv) Filings of any answer after an initial appearance fee has been paid.

The filing fee shall be distributed as follows: seventeen dollars ($17.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; one hundred thirty-five dollars ($135) of such filing fee, or in a case assigned to the magistrate division of the district court eighty dollars ($80.00) of such filing fee, shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund; seventeen dollars ($17.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section; and six dollars ($6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(2) Felonies and misdemeanors. A fee of seventeen dollars and fifty cents ($17.50) shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, except when the court orders such fee waived because the person is indigent and unable to pay such fee. If the magistrate court facilities are provided by the county, five dollars ($5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and twelve dollars and fifty cents ($12.50) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section. If the magistrate court facilities are provided by a city, five dollars ($5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents ($2.50) of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrate court facilities, and ten dollars ($10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section.

(3) Infractions. A fee of sixteen dollars and fifty cents ($16.50) shall be paid, but not in advance, by each person found to have committed an infraction or any minor traffic, conservation or ordinance violation; provided that the judge or magistrate may in his or her discretion consolidate

separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, five dollars ($5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and eleven dollars and fifty cents ($11.50) of such fee shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section. If the magistrate court facilities are provided by a city, five dollars ($5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents ($2.50) of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrate court facilities, and nine dollars ($9.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section.

(4) Initial appearance other than plaintiff. A fee of one hundred dollars ($100) shall be paid for any filing constituting the initial appearance by a party, except the plaintiff, in any civil action in the district court or in the magistrate's division of the district court, except small claims. If two (2) or more parties are making their initial appearance in the same filing, then only one (1) filing fee shall be collected. Of such fee, four dollars ($4.00) shall be paid to the county treasurer for deposit in the district court fund of the county; eighty dollars ($80.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund; ten dollars ($10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section; and six dollars ($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(5) Accountings. A fee of nine dollars ($9.00) shall be paid by the person or persons required to make an account pursuant to title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(6) Distribution of estate. A fee of twenty-five dollars ($25.00) shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, six dollars ($6.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; thirteen dollars ($13.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section; and six dollars ($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(7) Third party claim. A fee of fourteen dollars ($14.00) shall be paid by a party filing a third party claim as defined in the Idaho rules of civil procedure. Eight dollars ($8.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars

($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(8) Cross-claims. A fee of fourteen dollars ($14.00) shall be paid by any party filing a cross-claim. Eight dollars ($8.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars ($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(9) Change of venue. A fee of twenty-nine dollars ($29.00) shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. Nine dollars ($9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county and twenty dollars ($20.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

(10) Reopening a case.

(a) A fee of eighty-five dollars ($85.00) shall be paid by any party appearing after judgment or applying to reopen a case. Nine dollars ($9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; six dollars ($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund; and seventy dollars ($70.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

(b) A fee of one hundred eight dollars ($108) shall be paid by a party applying to reopen a divorce action or modify a divorce decree, with seventeen dollars ($17.00) of the fee to be paid to the county treasurer for deposit in the district court fund of the county; fifteen dollars ($15.00) of such fee to be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (15) of this section; six dollars ($6.00) of such fee to be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund; and seventy dollars ($70.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

(c) When the application to reopen a case consists only of a motion or other pleading to revive or renew a judgment, a fee of twenty-nine dollars ($29.00) shall be paid by the party filing the motion or pleading. Nine dollars ($9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county and twenty dollars ($20.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

(11) Appeal to district court. A fee of thirty-five dollars ($35.00) shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court; nine dollars ($9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; six dollars ($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund; and twenty dollars ($20.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund. No additional fee shall be required if a new trial is granted.

(12) Appeal to supreme court. A fee of thirty-five dollars ($35.00) shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. Nine dollars ($9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; six dollars ($6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund; and twenty dollars ($20.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

(13) Fees not covered by this section, including fees to defray the costs of electronic access to court records other than the register of actions, shall be set by rule or administrative order of the supreme court.

(14) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(15) That portion of the filing fees required to be remitted to the state treasurer for deposit pursuant to subsections (1), (2), (3), (4), (6) and (10) of this section shall be apportioned eighty-six percent (86%) to the state general fund and fourteen percent (14%) to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(16) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer, the county treasurer shall retain five dollars ($5.00), which shall be separately identified and deposited in the

district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code, and the administration of section 18-918(7), Idaho Code, relating to the evaluation and counseling or other treatment of such persons, including the payment of the costs of evaluating and counseling or other treatment of an indigent defendant. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(17) In consideration of the aforesaid fees, the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

History.

I.C., § 31-3201A, as added by 1969, ch. 139, § 2, p. 427; am. 1971, ch. 217, § 1, p. 972; am. 1972, ch. 31, § 1, p. 45; am. 1974, ch. 157, § 1, p. 1387; am. 1976, ch. 307, § 3, p. 1052; am. 1978, ch. 72, § 1, p. 143; am. 1979, ch. 219, § 2, p. 607; am. 1980, ch. 125, § 1, p. 281; am. 1981, ch. 238, § 1, p. 478; am. 1982, ch. 353, § 11, p. 874; am. 1985, ch. 28, § 1, p. 48; am. 1988, ch. 24, § 2, p. 27; am. 1993, ch. 196, § 2, p. 535; am. 1995, ch. 223, § 2, p. 770; am. 1996, ch. 164, § 1, p. 544; am. 1996, ch. 166, § 1, p. 548; am. 1996, ch. 256, § 2, p. 837; am. 1997, ch. 28, § 3, p. 48; am. 1998, ch. 76, § 1, p. 274; am. 1998, ch. 420, § 2, p. 1323; am. 2003, ch. 237, § 3, p. 607; am. 2005, ch. 114, § 2, p. 365; am. 2005, ch. 240, § 3, p. 743; am. 2006, ch. 267, § 2, p. 828; am. 2009, ch. 80, § 2, p. 221; am. 2014, ch. 190, § 6, p. 506.

STATUTORY NOTES

Cross References.

Court technology fund, § 1-1623.
General fund, § 67-1205.
Senior magistrate judges fund, § 1-2224.
State treasurer, § 67-1201 et seq.

Amendments.

The 2009 amendment, by ch. 80, rewrote the section to the extent that a detailed comparison is impracticable.

The 2014 amendment, by ch. 190, rewrote the section, raising fees and changing references to the ISTARS technology fund to the court technology fund.

Compiler's Notes.

The juvenile corrections act, referred to in paragraph (1)(b)(ii), is compiled as chapter 5, title 28, Idaho Code.

The child protective act, referred to in paragraph (1)(b)(iii), is compiled as § 16-1601 et seq.

JUDICIAL DECISIONS

Analysis

Allocation of fees.
Reimbursement.
Sharing of costs.

Allocation of fees.

City did not meet its burden to show good and sufficient cause for setting aside a § 1-2218 order from 1980, requiring the city to provide facilities for a magistrate division of the district court. While *Twin Falls County v. Cities of Twin Falls and Filer*, 143 Idaho 398, 146 P.3d 664 (2006), precluded the district judges from ordering a city to reimburse a county for use of county-owned facilities, the decision did not absolve the city of its responsibilities under the order. Additionally, the construction of a new county courthouse and the fact that the city voluntarily transferred its rights to all fees collected under this section to the county did not relieve the city of its responsibilities under the order. City of Boise v. Ada County (In re Facilities & Equip. Provided by the City of Boise), 147 Idaho 794, 215 P.3d 514 (2009).

Reimbursement.

Defendant whose conviction was vacated could not obtain restitution for the various fines, fees, and costs he had paid in connection with his conviction. The district court did not have jurisdiction over the issue or over the various agencies which had received the funds. State v. Peterson, 153 Idaho 157, 280 P.3d 184 (Ct. App. 2012).

Sharing of Costs.

While district court had statutory authority to order cities to provide facilities, equipment, and personnel for their own magistrate's offices, it did not have the authority to order cities to make pro rata contributions to support the cost of operating county magistrate's office used by cities. An alternate form of cost-sharing existed in the statutory scheme for portions of court fees to be diverted to the county providing the magistrate's office. Twin Falls County v. City of Twin Falls (In re Idaho Code 1-2218), 143 Idaho 398, 146 P.3d 664 (2006).

31-3201B. Peace officers standards and training — Fee. — The court shall charge a fee of fifteen dollars ($15.00) for peace officers standards and training purposes to be paid by each person found guilty of any felony or misdemeanor, or found to have committed an infraction or any minor traffic, conservation or ordinance violation, except for cars unlawfully left or parked or when the court orders such fee waived because the person is indigent and unable to pay such fee; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the peace officers standards and training fund.

History.

I.C., § 31-3201B, as added by 1983, ch. 117, § 3, p. 258; am. 1989, ch. 84, § 1, p. 145; am. 1994, ch. 193, § 1, p. 623; am. 2005, ch. 114, § 3, p. 365; am. 2012, ch. 159, § 1, p. 435.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 159, substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" near the beginning of the section.

JUDICIAL DECISIONS

Reimbursement.

District court did not have jurisdiction over reimbursement of various funds defendant had paid related to his conviction once that conviction was vacated. Even assuming the district court had subject matter jurisdiction, it lacked personal jurisdiction over the nonparty agencies that collected, disbursed, or retained the monies paid. State v. Peterson, 153 Idaho 157, 280 P.3d 184 (Ct. App. 2012).

31-3201C. Community service fee. — The court shall charge a fee of sixty cents (60¢) per hour of community service to be remitted to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service; however, if a county is self-insured and provides worker's compensation insurance for persons performing community service, then remittance to the state insurance fund is not required. This per hour fee shall be paid by each person found guilty of any felony or misdemeanor and community service is provided as part of the sanction or as a condition of a withheld judgment or probation. The court may waive such fee if it determines the person is indigent and unable to pay

such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the district court and deposited in the county treasury for payment to the state insurance fund.

History.
I.C., § 31-3201C, as added by 1994, ch. 233, § 1, p. 724; am. 2000, ch. 33, § 1, p. 61; am. 2009, ch. 154, § 3, p. 449.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 154, added "however, if a county is self-insured and provides worker's compensation insurance for persons performing community service, then remittance to the state insurance fund is not required" in the first sentence.

31-3201D. County misdemeanor probation supervision fee. — (1) Any person under a supervised probation program for a misdemeanor offense shall be required to pay an amount not more than the maximum monthly felony probation or parole supervision fee set forth in section 20-225, Idaho Code, per month, or such lesser sum as determined by the administrative judge of the judicial district, as a misdemeanor probation supervision fee. Any failure to pay such fee shall constitute grounds for the revocation of probation by the court, but this shall not be the exclusive remedy for its collection. The court for good cause may exempt a person from the payment of all or any part of the foregoing fee.

(2) Any fee paid under this section on or after July 1, 2008, and regardless of whether the underlying judgment of conviction, withheld judgment or order imposing probation was entered before or after that date, shall be paid to the clerk of the district court, who shall pay the first one dollar ($1.00) of each monthly payment to the state treasurer for deposit in the peace officers standards and training fund authorized in section 19-5116, Idaho Code, to help offset the costs to counties for the basic training, continuing education and certification of misdemeanor probation officers whether those officers are employees of or by private sector contract with a county; the clerk of the district court shall deposit the remainder of each monthly payment into the county misdemeanor probation fund which is hereby created in each county, or at the option of the board of county commissioners, deposited in the county justice fund to be used for the purposes described in this section. Moneys from this fee may be accumulated from year to year and shall be expended exclusively for county misdemeanor probation services and related purposes.

(3) This section shall not restrict the court from ordering the payment of other costs and fees that, by law, may be imposed on persons who have been found guilty of or have pled guilty to a criminal offense, including those who have been placed on probation or parole.

History.
I.C., § 31-3201D, as added by 1998, ch. 144, § 1, p. 515; am. 2008, ch. 88, § 6, p. 247; am. 2011, ch. 128, § 2, p. 354; am. 2012, ch. 109, § 4, p. 299.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 88, divided the existing section into two subsections; added the subsection designations; in the first sentence in subsection (1), substituted "pay an amount not more than the maximum monthly felony probation or paroled supervision fee set forth in section 20-225, Idaho Code" for "pay not more than thirty-five dollars ($35.00)"; and in subsection (2), rewrote the first sentence, which formerly read: "The fee imposed under this section shall be paid to the clerk of the district court for deposit into the county misdemeanor probation fund which is hereby created in each county, or at the option of the board of county commissioners, deposited in the county justice fund to be used for the purposes described in this section."

The 2011 amendment, by ch. 128, in the first sentence in subsection (2), inserted "and certification" and "whether those officers are employees of or by private sector contract with a county."

The 2012 amendment, by ch. 109, added subsection (3).

31-3201G. Guardianship and conservatorship project fund. — (1) In addition to any other filing and reporting fees applicable to guardianships and conservatorships, the court shall charge the following fees:

(a) Fifty dollars ($50.00) for filing cases involving guardianships or conservatorships;

(b) Forty-one dollars ($41.00) for reports required to be filed with the court by conservators; and

(c) Twenty-five dollars ($25.00) for reports required to be filed with the court by guardians.

(2) The additional fees set forth in paragraphs (a), (b) and (c) of subsection (1) of this section shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in the guardianship and conservatorship project fund, which is hereby created in the state treasury. The fund shall be administered by the Idaho supreme court and shall consist of fees as provided in this section, any moneys recovered pursuant to section 15-5-314(2), Idaho Code, and any funds as may be appropriated by the legislature, grants, donations and moneys from other sources.

(3) Moneys in the fund shall be expended exclusively for the development of a project which shall be designed to improve reporting and monitoring systems and processes for the protection of persons and their assets where a guardian or conservator has been appointed. Elements of the project may include, but are not limited to, the following:

(a) The adoption of standards of practice for guardians;

(b) A requirement that guardians be registered;

(c) Consideration of an office of the public guardian in counties in which the project operates;

(d) A review of the strengths of Idaho law regarding the treatment and care of developmentally disabled persons; and

(e) If federal or grant funding is available, funding for adult protection services to seek guardians in cases for which volunteers cannot be enlisted.

(4) The supreme court shall report annually to the senate judiciary and rules committee and the house judiciary, rules and administration committee regarding the progress of the project.

History.
I.C., § 31-3201G, as added by 2005, ch. 55, § 1, p. 209; am. 2014, ch. 164, § 6, p. 460.

STATUTORY NOTES

Cross References.
State treasurer, § 67-1201 et seq.

Amendments.
The 2014 amendment, by ch. 164, rewrote the section heading which formerly read: "Pilot project fee"; in subsection (2), substituted "guardianship and conservatorship project fund" for "guardianship pilot project fund" in the first sentence and inserted "any moneys recovered pursuant to section 15-5-314(2), Idaho Code" in the second sentence; in subsection (3), in the introductory language, substituted "a project which shall be designed " for "a pilot project which will operate in at least three (3) Idaho counties and which shall be designed" in the first sentence and deleted "pilot" preceding "project" in the second sentence and in paragraph (c); and substituted "report annually" for "make a report in January 2007, and annually thereafter" in paragraph (4).

Compiler's Notes.
Section 1 of S.L. 2009, ch. 78, § 1, repealed section 2 of S.L. 2005, ch. 55, which would have made this section null and void on July 1, 2009.

31-3201H. Surcharge fee. — (1) The court shall charge a surcharge fee to be paid by each defendant for each criminal offense or infraction committed on or after April 15, 2010, for which the defendant is found or pleads guilty. Such fee shall be in addition to all other fines and fees levied.

(2) The amount of the surcharge fee shall be as follows:

(a) For each felony, the fee shall be one hundred dollars ($100);

(b) For each misdemeanor, the fee shall be fifty dollars ($50.00); and

(c) For each infraction, the fee shall be ten dollars ($10.00).

(3) The fee shall be collected by the clerk of the district court and shall be paid to the county treasurer, who shall, within five (5) days after the end of the month, pay such fees to the state treasurer, who shall deposit eighty percent (80%) of such fees in the drug court, mental health court and family court services fund created by section 1-1625, Idaho Code, and twenty percent (20%) of such fees in the court technology fund created by section 1-1623, Idaho Code.

History.
I.C., § 31-3201H, as added by 2010, ch. 205, § 3, p. 446; am. 2013, ch. 80, § 1, p. 199; am. 2014, ch. 190, § 7, p. 506.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 80, deleted "and before or on June 30, 2013" following "on or after April 15, 2010" in the introductory paragraph in subsection (1).

The 2014 amendment, by ch. 190, deleted "emergency" preceding "surcharge fee" in the section heading, in the first sentence in subsection (1), and in the introductory paragraph in subsection (2) , and substituted "court technology fund" for "Idaho statewide trial court automated records system (ISTARS) technology fund" in subsection (3).

Effective Dates.
Section 4 of S.L. 2010, ch. 205 declared an emergency. Approved March 31, 2010.

31-3204. Victim notification — Fee. — The court shall charge a fee of fifteen dollars ($15.00) for victim notification purposes to be paid by each person found guilty of each felony or misdemeanor, except when the court orders such fee waived because the person is indigent and unable to pay

such fee. Such fee shall be in addition to all other fines and fees levied. Such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state victim notification fund established in section 67-2912, Idaho Code.

History.
I.C., § 31-3204, as added by 2012, ch. 114, § 1, p. 316; am. 2014, ch. 335, § 1, p. 828.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 335, substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" in the first sentence of the section.

31-3205. Recorder's fees. — (1) The county recorder is allowed and may receive for his services, the following fees to be paid him by the party procuring his services:

(a) For recording every instrument, paper or notice, for the first page ..... $ 10.00
For each additional page ..... $ 3.00
(b) For electronic copies (as defined in subsection (2) of this section) requested on a recurring basis, for each page or image ..... $ .05
(c) For copies of any record or paper, for each page ..... $ 1.00
(d) For each certificate under seal, when required ..... $ 1.00
(e) For release or assignment where more than one (1) document is released or assigned in the same instrument, for each additional release or assignment ..... $ 1.00
(f) For recording every town plat or map, for first one hundred (100) lots or less ..... $ 11.00
And for each additional lot ..... $ .05
(g) For taking acknowledgments, including seal ..... $ 1.00
(h) For filing a survey, for each page ..... $ 5.00
(i) For making a copy of a survey or highway right-of-way plat ..... $ 4.00
(j) For issuing marriage license, filing, recording and indexing the certificate of marriage and taking and filing affidavits required in issuance of the license ..... $ 11.00
(k) For administering an oath, including jurat ..... $ 1.00
And certifying the same when required an additional sum of .... $ 1.00
(*l*) For comparing and certifying a prepared copy of a file or record in his office, for each page ..... $ .50
(m) For each certificate under seal there shall be an additional fee of ..... $ 1.00

(2) Electronic copies shall include copies provided via internet download, on a compact disc, zip disc, floppy disc, or other electronic means. The county recorder shall provide electronic copies if the record is maintained in electronic form and if the person specifically requests an electronic copy.

(3) For duplication of recorded documents in paper, microfilm or microfiche format requested on a recurring basis in excess of one hundred (100) pages, the fee shall be negotiated between the county recorder and the

purchaser of records. The fee shall not exceed the costs to the county recorder for the retrieval and duplication of the record. These negotiated fees shall be recommended by the county recorder and approved by the board of county commissioners. Any existing agreements for duplication of paper, microfilm or microfiche documents in excess of one hundred (100) pages are hereby ratified and approved. Any negotiated fees shall remain in effect until such time as either party requests a review of the fee.

(4) All instruments delivered to the county recorder for record shall be recorded rather than filed with the exception of plats, surveys, cornerstone markers and instruments under the Uniform Commercial Code.

(5) For all other services as recorder, not enumerated herein, the fee fixed in the statute requiring the service or the same fee as allowed the clerk of the district court for like service.

(6) A page shall not exceed fourteen (14) inches in length nor eight and one-half (8 1/2) inches in width. Each page shall be typewritten or be in legible writing. The recording fee to be charged for maps, sketches, drawings or other instruments except plats larger than the size permitted above for a page shall be two cents (2¢) per square inch.

History.

1890-1891, p. 174, § 4; reen. 1899, p. 116, § 4; modified by 1899, p. 405; compiled R.C., § 2124; am. 1911, ch. 173, § 1, p. 567; compiled and reen. C.L., § 2124; C.S., § 3706; I.C.A., § 30-2705; am. 1935, ch. 105, § 1, p. 254; am. 1949, ch. 168, § 1, p. 364; am. 1951, ch. 251, § 1, p. 540; am. 1959, ch. 72, § 1, p. 157; am. 1967, ch. 272, § 6, p. 745; am. 1969, ch. 199, § 1, p. 574; am. 1976, ch. 281, § 3, p. 962; am. 1979, ch. 61, § 1, p. 163; am. 1981, ch. 293, § 1, p. 613; am. 1982, ch. 275, § 1, p. 706; am. 1984, ch. 29, § 1, p. 50; am. 1986, ch. 14, § 1, p. 55; am. 1987, ch. 29, § 1, p. 37; am. 1994, ch. 364, § 1, p. 1139; am. 2006, ch. 286, § 1, p. 882; am. 2008, ch. 111, § 1, p. 313; am. 2010, ch. 137, § 1, p. 291; am. 2013, ch. 280, § 1, p. 728.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 111, in paragraph (1)(i), added "for each page"; and deleted paragraph (1)(n), which read: "For making and certifying a report of search for lien upon personal property, excluding Uniform Commercial Code, for each name searched .... $ 5.00," and redesignated former paragraph (1)(o) as present paragraph (1)(n).

The 2010 amendment, by ch. 137, in paragraph (1)(a), substituted "the first page" for "each page" and "$10.00" for "$3.00," and added "For each additional page .... $3.00"; added paragraph (1)(b) and redesignated the subsequent paragraphs in subsection (1); added subsection (2) and redesignated the subsequent subsections accordingly; and in subsection (3), inserted "paper, microfilm or microfiche format requested on a recurring basis in" and deleted "or continuous copy requests for duplication of records using compact disc, zip disc, floppy disc or other electronic means" following "(100) pages" and substituted "duplication of paper, microfilm or microfiche documents in excess of one hundred (100) pages" for "duplication of records" in the fourth sentence.

The 2013 amendment, by ch. 280, deleted former paragraphs (1)(h) and (i), which related to fees for filing location notices for mining claims and for recording affidavits of labor of mining claims, and redesignated the subsequent paragraphs accordingly.

31-3220. Inability to pay fees — Definitions — Affidavit.

JUDICIAL DECISIONS

ANALYSIS

Waiver of fees and costs.
Waiver of security.

Waiver of Fees and Costs.

Difference in treatment between this section, waiving fees in certain cases for indigent non-prisoners, and § 31-3220A, generally requiring at least partial payment of fees by indigent prisoners, is justified by a legitimate legislative purpose and does not violate a prisoner's right to equal protection of the laws. Lerajjareanra-o-kel-ly v. Schow, 147 Idaho 865, 216 P.3d 154 (Ct. App. 2009).

Waiver of Security.

The bond required under § 6-610 before an action may be filed against a law enforcement officer may be waived under this section. Athay v. Stacey, 146 Idaho 407, 196 P.3d 325 (2008).

Cited in: Hyde v. Fisher, 143 Idaho 782, 152 P.3d 653 (Ct. App. 2007).

31-3220A. Prisoner payment of fees at time of filing of action — Partial payment of fees — Dismissal of action.

JUDICIAL DECISIONS

ANALYSIS

Bankruptcy.
Constitutionality.
Indigency.

Bankruptcy.

The language of subsection (16) of this section, and its legislative history, evidence an intent to punish prisoners for frivolous litigation through the imposition of costs and attorney's fees, thereby attempting to deter future such litigation. Consequently, costs and fees awarded under subsection (16) are not dischargeable debts in bankruptcy. Ada County Prosecuting Atty's. Office v. Searcy (In re Searcy), 448 B.R. 19 (Bankr. D. Idaho 2011), aff'd, 463 B.R. 19 (B.A.P. 9th Cir. 2012).

Constitutionality.

Difference in treatment between § 31-3220, waiving fees in certain cases for indigent non-prisoners, and this section, generally requiring at least partial payment of fees by indigent prisoners, is justified by a legitimate legislative purpose and does not violate a prisoner's right to equal protection of the laws. Lerajjareanra-o-kel-ly v. Schow, 147 Idaho 865, 216 P.3d 154 (Ct. App. 2009).

Indigency.

Under subsection (2), the time to analyze plaintiff's financial situation for purposes of indigency is when the case is filed. Pauls v. Green, 816 F. Supp. 2d 961 (D. Idaho 2011).

Cited in: Hyde v. Fisher, 143 Idaho 782, 152 P.3d 653 (Ct. App. 2007).

31-3221. Payments to court by credit card or debit card. — (1) The clerk of the district court may accept payment of a debt owed to the court by a credit card or debit card. Any person making payment on a debt owed to the court by a credit card or debit card shall be assessed an electronic payment convenience fee established by the supreme court, which shall include, among other costs, the amount charged the court by the issuer for the use of the card. This fee may also be paid by credit card or debit card and included in the transaction for the payment of the debt owed to the court. The electronic payment convenience fee shall be separate from the debt owed to the court and shall be deposited into the court technology fund created in section 1-1623, Idaho Code, and shall be used for the implementation of the provisions of this section. The debt owed to the court shall not be expunged, canceled, released, discharged or satisfied and any receipt or other evidence of payment shall be deemed conditional until the court has received final and unconditional payment of the full amount due from the financing agency or card issuer for the transaction. If an electronic payment once made is subsequently denied, revoked or otherwise canceled for any

reason, and the payment is withdrawn from the court, the court may proceed as though payment had never been made.

(2) Definitions. As used in this section:

(a) "Cardholder" means the person or organization named on the face of a credit card or debit card to whom or for whose benefit the credit card or debit card is issued by an issuer.

(b) "Credit card" means any instrument or device, whether known as a credit card or credit plate or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit.

(c) "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.

(d) "Debt owed to the court" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, cash deposit of bail, moneys expended in providing counsel and other defense services to indigent defendants, or other charges which a court judgment has ordered to be paid to the court or which a party has agreed to pay in criminal or civil cases and includes any interest or penalty on such unpaid amounts as provided for in the judgment or by law.

(e) "Issuer" means a business organization, financial institution or authorized agent of a business organization or financial institution that issues a credit card or debit card.

(3) The supreme court may adopt rules as deemed appropriate for the administration of this section and may enter into contracts with an issuer or other organization to implement the provisions of this section.

History.
I.C., § 31-3221, as added by 2003, ch. 287, § 1, p. 777; am. 2006, ch. 73, § 2, p. 226; am. 2014, ch. 190, § 8, p. 506.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 190, substituted "court technology fund" for "ISTARS technology fund" in the fourth sentence in subsection (1).

CHAPTER 33

OTHER COUNTY CHARGES

SECTION.

31-3302. County charges enumerated. — The following are county charges:

(1) Charges incurred against the county by virtue of any provision of this title.

(2) The compensation allowed by law to constables and sheriffs for executing process on persons charged with criminal offenses; for services

and expenses in conveying criminals to jail; for the service of subpoenas issued by or at the request of the prosecuting attorneys, and for other services in relation to criminal proceedings.

(3) The expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail. Provided that any medical expenses shall be paid at the rate of reimbursement as provided in chapter 35, title 31, Idaho Code, unless a rate of reimbursement is otherwise established by contract or agreement.

(4) The compensation allowed by law to county officers in criminal proceedings, when not otherwise collectible.

(5) The sum required by law to be paid to grand jurors and indigent witnesses in criminal cases.

(6) The accounts of the coroner of the county, for such services as are not provided to be paid otherwise.

(7) The necessary expenses incurred in the support of county hospitals, and the indigent sick and nonmedical assistance for indigents, whose support is chargeable to the county.

(8) The contingent expenses, necessarily incurred for the use and benefit of the county.

(9) Every other sum directed by law to be raised for any county purpose, under the direction of the board of county commissioners, or declared to be a county charge.

History.

R.S., § 2161; am. 1899, p. 116, § 7; am. and reen. R.C. & C.L., § 2136; C.S., § 3721; I.C.A., § 30-2802; am. 1936 (3rd E.S.), ch. 2, § 1, p. 6; am. 1939, ch. 182, § 17, p. 338; am. 1970, ch. 120, § 14, p. 284; am. 1992, ch. 83, § 1, p. 256; am. 1994, ch. 362, § 3, p. 1135; am. 2009, ch. 177, § 2, p. 558; am. 2011, ch. 291, § 2, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, updated the section reference in subsection (3).

The 2011 amendment, by ch. 291, substituted "rate of reimbursement as provided in chapter 354, title 31" for "unadjusted medicaid rate of reimbursement as provided in section 31-3502(21)" in subsection (3).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

CHAPTER 34

NONMEDICAL INDIGENT ASSISTANCE

31-3403. Definitions. — As used in this chapter:

(1) "Adult household member" means any individual eighteen (18) years of age and over who resides in the household.

(2) "Anticipated future income" means a reasonable expectation of income to the household based on an analysis of past income, future income, current

income, experience, skills, education, inheritance and possible assets from any source.

(3) "Applicant" means the individual and all others in the household who are requesting nonmedical assistance and who submit a county application.

(4) "Assets" means property rights including, but not limited to, personal, real, tangible and intangible property.

(5) "Authorized representative" means the applicant's guardian or appointed attorney-in-fact.

(6) "Board" means a board of county commissioners.

(7) "Clerk" means the clerk of a board of county commissioners or his designee.

(8) "Emergency" means any circumstance demanding immediate action.

(9) "Household" means a collective body of persons consisting of spouses or parents and their children who reside in the same residence; or all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(10) "Indigent" means any applicant who does not have resources available from whatever source which shall be sufficient to enable the applicant to provide nonmedical assistance or a portion thereof.

(11) "Information release" means the document authorizing release of confidential information.

(12) "Investigation" means a detailed examination of the application and information required from the applicant and others to verify eligibility.

(13) "Nonmedical assistance" means reasonable costs for assistance, which includes food and shelter, and other such necessary services determined by the board by resolution.

(14) "Obligated county for payment" means the county wherein residency has been established.

(15) "Recipient" means the individual(s) determined eligible for county assistance.

(16) "Repayment" means the authority of the board of county commissioners to require indigent person(s) to repay the county for assistance when investigation of their application determines their ability to do so.

(17) "Resident" means a person with a home, house, place of abode, place of habitation, dwelling or place where one actually lived for a consecutive period of thirty (30) days or more prior to the date of application.

(18) "Resource" means assets, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, gifts, bequests, grants, all forms of public or private assistance, crime victims compensation, worker's compensation, veteran's benefits, medicaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. For purposes of determining approval for nonmedical indigency only, resources shall not include the value of the homestead of the applicant or obligated person's residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

History.
I.C., § 31-3403, as added by 1992, ch. 83, § 3, p. 256; am. 1998, ch. 204, § 1, p. 723; am. 2014, ch. 97, § 19, p. 265.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 97, substituted "victims" for "victim's" in the first sentence of subsection (18).

31-3412. Indigent burial or cremation. — It shall be the duty of the board to provide for burial or cremation of any deceased indigent person. The amount paid by the obligated county shall not in any case exceed the established or negotiated rate set by each board. If the coroner, mortician or other responsible parties are unable to establish next of kin or other resources, they may make application to the board. Application must be made prior to services rendered and pursuant to terms of negotiated agreement. The county shall be free from any liability for said burial or cremation.

History.
I.C., § 31-3412, as added by 1992, ch. 83, § 3, p. 256; am. 2012, ch. 208, § 2, p. 562.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 208, inserted "or cremation" in the section heading.

CHAPTER 35

HOSPITALS FOR INDIGENT SICK

SECTION.

31-3501. Declaration of policy. — (1) It is the policy of this state that each person, to the maximum extent possible, is responsible for his or her own medical care and that of his or her dependents and to that end, shall be encouraged to purchase his or her own medical insurance with coverage sufficient to prevent them from needing to request assistance pursuant to this chapter. However, in order to safeguard the public health, safety and welfare, and to provide suitable facilities and provisions for the care and hospitalization of persons in this state, and, in the case of medically indigent residents, to provide for the payment thereof, the respective counties of this state, and the board and the department shall have the duties and powers as hereinafter provided.

(2) The county medically indigent program and the catastrophic health care cost program are payers of last resort. Therefore, applicants or third party applicants seeking financial assistance under the county medically indigent program and the catastrophic health care cost program shall be subject to the limitations and requirements as set forth herein.

History.

I.C., § 31-3501, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 1, p. 410; am. 1996, ch. 410, § 2, p. 1357; am. 2009, ch. 177, § 3, p. 558; am. 2010, ch. 273, § 1, p. 691; am. 2011, ch. 291, § 3, p. 794; am. 2013, ch. 279, § 1, p. 721.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, inserted "and the department" near the end.

The 2010 amendment, by ch. 273, added the subsection (1) designation and near the end thereof substituted "and the board" for "the administrator"; and added subsection (2).

The 2011 amendment, by ch. 291, substituted "indigent residents" for "indigent persons" in the second sentence in subsection (1).

The 2013 amendment, by ch. 279, inserted "and that of his or her dependents" in the first sentence of subsection (1).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

JUDICIAL DECISIONS

Cited in: Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008); St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010).

31-3502. Definitions. — As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning:

(1) "Applicant" means any person who is requesting financial assistance under this chapter.

(2) "Application" means the combined application for state and county medical assistance pursuant to sections 31-3504 and 31-3503E, Idaho Code. In this chapter an application for state and county medical assistance shall also mean an application for financial assistance.

(3) "Board" means the board of the catastrophic health care cost program, as established in section 31-3517, Idaho Code.

(4) "Case management" means coordination of services to help meet a patient's health care needs, usually when the patient has a condition that requires multiple services.

(5) "Catastrophic health care costs" means the cost of necessary medical services received by a recipient that, when paid at the then existing reimbursement rate, exceeds the total sum of eleven thousand dollars ($11,000) in the aggregate in any consecutive twelve (12) month period.

(6) "Clerk" means the clerk of the respective counties or his or her designee.

(7) "Completed application" shall include at a minimum the cover sheet requesting services, applicant information including diagnosis and requests for services and signatures, personal and financial information of the applicant and obligated person or persons, patient rights and responsibilities, releases and all other signatures required in the application.

(8) "County commissioners" means the board of county commissioners in their respective counties.

(9) "County hospital" means any county approved institution or facility for the care of sick persons.

(10) "Department" means the department of health and welfare.

(11) "Dependent" means any person whom a taxpayer claims as a dependent under the income tax laws of the state of Idaho.

(12) "Emergency service" means a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care, including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent person who possesses an average knowledge of health and medicine, to result in:

(a) Placing the patient's health in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part.

(13) "Hospital" means a facility licensed and regulated pursuant to sections 39-1301 through 39-1314, Idaho Code, or an out-of-state hospital providing necessary medical services for residents of Idaho, wherein a reciprocal agreement exists, in accordance with section 31-3503B, Idaho Code, excluding state institutions.

(14) "Medicaid eligibility review" means the process used by the department to determine whether a person meets the criteria for medicaid coverage.

(15) "Medical claim" means the itemized statements and standard forms used by hospitals and providers to satisfy centers for medicare and medicaid services (CMS) claims submission requirements.

(16) "Medical home" means a model of primary and preventive care delivery in which the patient has a continuous relationship with a personal physician in a physician directed medical practice that is whole person oriented and where care is integrated and coordinated.

(17) "Medically indigent" means any person who is in need of necessary medical services and who, if an adult, together with his or her spouse, or whose parents or guardian if a minor or dependent, does not have income and other resources available to him from whatever source sufficient to pay for necessary medical services. Nothing in this definition shall prevent the board and the county commissioners from requiring the applicant and obligated persons to reimburse the county and the catastrophic health care cost program, where appropriate, for all or a portion of their medical expenses, when investigation of their application pursuant to this chapter, determines their ability to do so.

(18)A. "Necessary medical services" means health care services and supplies that:

(a) Health care providers, exercising prudent clinical judgment, would provide to a person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms;

(b) Are in accordance with generally accepted standards of medical practice;

(c) Are clinically appropriate, in terms of type, frequency, extent, site and duration and are considered effective for the covered person's illness, injury or disease;

(d) Are not provided primarily for the convenience of the person, physician or other health care provider; and

(e) Are the most cost-effective service or sequence of services or supplies, and at least as likely to produce equivalent therapeutic or diagnostic results for the person's illness, injury or disease.

B. Necessary medical services shall not include the following:

(a) Bone marrow transplants;

(b) Organ transplants;

(c) Elective, cosmetic and/or experimental procedures;

(d) Services related to, or provided by, residential, skilled nursing, assisted living and/or shelter care facilities;

(e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well-baby care;

(f) Medicare copayments and deductibles;

(g) Services provided by, or available to, an applicant from state, federal and local health programs;

(h) Medicaid copayments and deductibles; and

(i) Drugs, devices or procedures primarily utilized for weight reduction and complications directly related to such drugs, devices or procedures.

(19) "Obligated person" means the person or persons who are legally responsible for an applicant including, but not limited to, parents of minors or dependents.

(20) "Primary and preventive health care" means the provision of professional health services that include health education and disease prevention,

initial assessment of health problems, treatment of acute and chronic health problems and the overall management of an individual's health care services.

(21) "Provider" means any person, firm or corporation certified or licensed by the state of Idaho or holding an equivalent license or certification in another state, that provides necessary medical services to a patient requesting a medically indigent status determination or filing an application for financial assistance.

(22) "Recipient" means an individual determined eligible for financial assistance under this chapter.

(23) "Reimbursement rate" means the unadjusted medicaid rate of reimbursement for medical charges allowed pursuant to title XIX of the social security act, as amended, that is in effect at the time service is rendered. The "reimbursement rate" shall mean ninety-five percent (95%) of the unadjusted medicaid rate.

(24) "Resident" means a person with a home, house, place of abode, place of habitation, dwelling or place where he or she actually lived for a consecutive period of thirty (30) days or more within the state of Idaho. A resident does not include a person who comes into this state for temporary purposes, including, but not limited to, education, vacation, or seasonal labor. Entry into active military duty shall not change a person's residence for the purposes of this chapter. Those physically present within the following facilities and institutions shall be residents of the county where they were residents prior to entering the facility or institution:

(a) Correctional facilities;

(b) Nursing homes or residential or assisted living facilities;

(c) Other medical facility or institution.

(25) "Resources" means all property, for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest, whether tangible or intangible, real or personal, liquid or nonliquid, or pending, including, but not limited to, all forms of public assistance, crime victims compensation, worker's compensation, veterans benefits, medicaid, medicare, supplemental security income (SSI), third party insurance, other insurance or apply for section 1011 of the medicare modernization act of 2003, if applicable, and any other property from any source. Resources shall include the ability of an applicant and obligated persons to pay for necessary medical services, excluding any interest charges, over a period of up to five (5) years starting on the date necessary medical services are first provided. For purposes of determining approval for medical indigency only, resources shall not include the value of the homestead on the applicant or obligated person's residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

(26) "Third party applicant" means a person other than an obligated person who completes, signs and files an application on behalf of a patient. A third party applicant who files an application on behalf of a patient pursuant to section 31-3504, Idaho Code, shall, if possible, deliver a copy of the application to the patient within three (3) business days after filing the application.

(27) "Third party insurance" means casualty insurance, disability insurance, health insurance, life insurance, marine and transportation insurance, motor vehicle insurance, property insurance or any other insurance coverage that may pay for a resident's medical bills.

(28) "Utilization management" means the evaluation of medical necessity, appropriateness and efficiency of the use of health care services, procedures and facilities. "Utilization management" may include, but is not limited to, preadmission certification, the application of practice guidelines, continued stay review, discharge planning, case management, preauthorization of ambulatory procedures, retrospective review and claims review. "Utilization management" may also include the amount to be paid based on the application of the reimbursement rate to those medical services determined to be necessary medical services.

History.

I.C., § 31-3502, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 6, p. 462; am. 1980, ch. 185, § 2, p. 410; am. 1982, ch. 190, § 1, p. 511; am. 1983, ch. 215, § 1, p. 594; am. 1984, ch. 99, § 1, p. 227; am. 1988, ch. 332, § 2, p. 994; am. 1989, ch. 374, § 1, p. 942; am. 1991, ch. 233, § 7, p. 553; am. 1992, ch. 83, § 4, p. 256; am. 1993, ch. 112, § 1, p. 283; am. 1996, ch. 410, § 3, p. 1357; am. 1998, ch. 109, § 1, p. 373; am. 2000, ch. 274, § 2, p. 799; am. 2000, ch. 317, § 1, p. 1067; am. 2004, ch. 300, § 1, p. 837; am. 2005, ch. 281, § 1, p. 915; am. 2009, ch. 177, § 4, p. 558; am. 2010, ch. 273, § 2, p. 691; am. 2011, ch. 291, § 4, p. 794; am. 2013, ch. 279, § 2, p. 721; am. 2014, ch. 258, § 1, p. 648.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, alphabetized and rewrote the definitions.

The 2010 amendment, by ch. 273, deleted subsection (1), which was the definition for "administrator" and redesignated subsections (2) through (6) accordingly; in subsection (2), added the language beginning "and the uniform form used for the initial review" through to the end; in subsection (3), substituted "the board of the catastrophic health care cost program, as established in section 31-3517, Idaho Code" for "the board of county commissioners"; in subsection (6), substituted "clerk of the respective counties" for "clerk of the board"; added subsection (7); in subsection (9), deleted "or its contractor" from the end; in subsection (15), substituted "board and the county commissioners" for "board of county commissioners and administrator"; added paragraph (16)B.(i); in subsection (20), substituted "eligible for financial assistance" for "eligible for necessary medical services"; and, in the first sentence in subsection (23), inserted "or pending" and "supplemental security income (SSI), third party insurance, other available insurance."

The 2011 amendment, by ch. 291, added the definitions for "completed application", "medical claim", and "third party insurance"; updated the definitions for "application", "catastrophic health care costs", "hospital", "reimbursement rate", "resources" and "utilization management"; and made necessary redesignation and stylistic changes.

The 2013 amendment, by ch. 279, substituted "personal and financial information of the applicant and obligated person or persons" for "personal information of the applicant" in subsection (7); inserted "or dependent" in the first sentence of subsection (17); added "including, but not limited to, parents of minors or dependents" at the end of subsection (19); substituted "July 1, 2014" for "July 1, 2013" in subsection (23); and added "starting on the date necessary medical services are first provided" at the end of the second sentence of subsection (25).

The 2014 amendment, by ch. 258, deleted "Beginning July 1, 2011, and sunsetting July 1, 2014" from the beginning of the last sentence in subsection (23).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

Federal References.

Title XIX of the social security act, referred to in subsection (23), is compiled as 42 U.S.C.S. § 1396 et seq.

JUDICIAL DECISIONS

ANALYSIS

Available resources.
Medically indigent.
Resident.

Available Resources.

A patient was not medically indigent and the hospital was not entitled to reimbursement from the county on the patient's behalf where the patient was voluntarily unemployed outside the home. Imputing income to the patient as a "resource" as that term was defined in former I.C. § 31-3502(17) or in imputing future tax refunds as a resource was proper. St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010).

Medically Indigent.

Denial of an application of medical indigency benefits on the ground that an applicant was an undocumented alien and, therefore, not a resident of the county was remanded to the county board of commissioners because the board failed to make findings on critical factors of eligibility, including indigency and medical necessity. Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008).

Nothing in the definitions of "medically indigent" or "resources" allows for the consideration of resources available to a regional hospital, or third party applicant, such as federal payments under the Hill-Burton Act, when determining whether a person is medically indigent. St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 150 Idaho 484, 248 P.3d 735 (2011).

Resident.

Patient was a resident of Ada County for purposes of medical indigency benefits where he had lived in Boise for more than thirty days and intended to remain there while working to support his wife and children in Mexico. His status as an undocumented alien did not affect the determination of whether he was a "resident" or not. St. Alphonsus Reg'l Med. Ctr., Inc. v. Bd. of County Comm'rs, 146 Idaho 51, 190 P.3d 870 (2008).

Cited in: Bonner County v. Kootenai Hosp. Dist. (In re Daniel W.), 145 Idaho 677, 183 P.3d 765 (2008); St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'r (In re O'Brien), 146 Idaho 753, 203 P.3d 683 (2009); BHC Intermountain Hosp., Inc. v. Ada County, 150 Idaho 93, 244 P.3d 237 (2010).

31-3503. Powers and duties of county commissioners. — The county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law:

(1) Pay for necessary medical services for the medically indigent residents of their counties as provided in this chapter and as approved by the county commissioners at the reimbursement rate up to the total sum of eleven thousand dollars ($11,000) in the aggregate per resident in any consecutive twelve (12) month period or contract for the provision of necessary medical services pursuant to sections 31-3520 and 31-3521, Idaho Code.

(2) Have the right to contract with providers, transfer patients, negotiate provider agreements, conduct utilization management or any portion thereof, pay for authorized expenses directly, or indirectly through the use of alternative programs, that would assist in managing costs of providing health care for indigent persons, and all other powers incident to the county's duties created by this chapter.

(3) Cooperate with the department, the board and contractors retained by the department or the board to provide services including, but not limited to, medicaid eligibility review and utilization management on behalf of the counties and the board.

(4) Have the jurisdiction and power to provide county hospitals and public general hospitals for the county and others who are sick, injured,

maimed, aged and infirm and to erect, enlarge, purchase, lease, or otherwise acquire, and to officer, maintain and improve hospitals, hospital grounds, nurses' homes, shelter care facilities and residential or assisted living facilities as defined in section 39-3301, Idaho Code, superintendent's quarters, medical clinics, as that term is defined in section 39-1319, Idaho Code, medical clinic grounds or any other necessary buildings, and to equip the same, and to replace equipment, and for this purpose said commissioners may levy an additional tax of not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the county. The term "public general hospitals" as used in this subsection shall be construed to include nursing homes.

History.

I.C., § 31-3503, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 3, p. 410; am. 1982, ch. 190, § 2, p. 511; am. 1983, ch. 215, § 2, p. 594; am. 1989, ch. 193, § 2, p. 475; am. 1991, ch. 233, § 8, p. 553; am. 1993, ch. 112, § 2, p. 283; am. 1995, ch. 9, § 1, p. 14; am. 1995, ch. 82, § 5, p. 218; am. 1996, ch. 322, § 14, p. 1029; am. 1996, ch. 410, § 4, p. 1357; am. 1997, ch. 174, § 1, p. 492; am. 2000, ch. 274, § 3, p. 799; am. 2009, ch. 177, § 5, p. 558; am. 2010, ch. 273, § 3, p. 691; am. 2011, ch. 291, § 5, p. 794; am. 2012, ch. 61, § 1, p. 163.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in subsection (1), substituted "eleven thousand dollars ($11,000)" for "ten thousand dollars ($10,000)" and inserted "consecutive"; in subsection (2), inserted "with providers" and "county's"; and rewrote subsection (3), which contained obsolete language concerning pay for emergency services.

The 2010 amendment, by ch. 273, deleted "boards of" preceding "county commissioners" in the section heading and in the introductory paragraph; in subsection (3), inserted "the board" and "or the board," and substituted "counties and the board" for "counties and the administrator"; and in subsection (4), substituted "commissioners" for "boards" near the end of the first sentence.

The 2011 amendment, by ch. 291, substituted the current subsection (1) for "Care for and maintain the medically indigent residents of their counties as provided in this chapter up to eleven thousand dollars ($11,000) per claim in the aggregate over a consecutive twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code"; and inserted "conduct utilization management or any portion thereof" in subsection (2).

The 2012 amendment, by ch. 61, inserted "pay for authorized expenses directly, or indirectly through the use of alternative programs, that would assist in managing costs of providing health care for indigent persons" in subsection (2).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

Effective Dates.

Section 3 of S.L. 2012, ch. 61 declared an emergency and made this section retroactive to July 1, 2011. Approved March 14, 2012.

31-3503A. Powers and duties of the board. — The board shall, under such limitations and restrictions as are prescribed by law:

(1) Pay for the cost of necessary medical services for a medically indigent resident, as provided in this chapter, where the cost of necessary medical services when paid at the reimbursement rate exceeds the total sum of eleven thousand dollars ($11,000) in the aggregate per resident in any consecutive twelve (12) month period;

(2) Have the right to negotiate provider agreements, contract for utilization management or any portion thereof, pay for authorized expenses

directly, or indirectly through the use of alternative programs, that would assist in managing costs of providing health care for indigent persons, and all other powers incident to the board's duties created by this chapter;

(3) Cooperate with the department, respective counties of the state and contractors retained by the department or county commissioners to provide services including, but not limited to, eligibility review and utilization management on behalf of the counties and the board;

(4) Require, as the board deems necessary, annual reports from each county and each hospital including, but not limited to, the following:

(a) From each county and for each applicant:

(i) Case number and the date services began;

(ii) Age;

(iii) Residence;

(iv) Sex;

(v) Diagnosis;

(vi) Income;

(vii) Family size;

(viii) Amount of costs incurred including provider, legal and administrative charges;

(ix) Approval or denial; and

(x) Reasons for denial.

(b) From each hospital:

(i) 990 tax forms or comparable information;

(ii) Cost of charges where charitable care was provided; and

(iii) Administrative and legal costs incurred in processing claims under this chapter.

(5) Authorize all disbursements from the catastrophic health care cost program in accordance with the provisions of this chapter;

(6) Make and enter into contracts;

(7) Develop and submit a proposed budget setting forth the amount necessary to perform its functions and prepare an annual report;

(8) Perform such other duties as set forth in the laws of this state; and

(9) Conduct examinations, investigations, audits and hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter necessary to fulfill its duties.

History.

I.C., § 31-3503A, as added by 1996, ch. 410, § 5, p. 1357; am. 1997, ch. 174, § 2, p. 492; am. 2009, ch. 177, § 6, p. 558; am. 2010, ch. 273, § 4, p. 691; am. 2011, ch. 291, § 6, p. 794; am. 2012, ch. 61, § 2, p. 163.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in subsection (1), substituted "eleven thousand dollars ($11,000)" for "ten thousand dollars ($10,000)" and inserted "consecutive"; and rewrote subsection (3), which contained obsolete language concerning pay for emergency services.

The 2010 amendment, by ch. 273, in the section heading and throughout the section, substituted "board" for "administrator"; and in subsection (2), inserted "respective counties of the state" and "or county commissioners."

The 2011 amendment, by ch. 291, in subsection (1), substituted the current text for "Pay for necessary medical services for a resident medically indigent person where the reimbursement rate for the claim exceeds in aggregate the sum of eleven thousand dollars

($11,000) during a consecutive twelve (12) month period"; added subsections (2) and (5) through (9); renumbered subsection (3) as (4); and deleted "and provider" following "hospital" in the introductory sentence in subsection (4).

The 2012 amendment, by ch. 61, inserted "pay for authorized expenses directly, or indirectly through the use of alternative programs, that would assist in managing costs of providing health care for indigent persons" in subsection (2).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

Effective Dates.

Section 3 of S.L. 2012, ch. 61 declared an emergency and made this section retroactive to July 1, 2011. Approved March 14, 2012.

31-3503C. Powers and duties of the department. — The department shall:

(1) Design and manage a utilization management program and third party recovery system for the medically indigent program.

(2) Have the authority to engage one (1) or more contractors or third party administrators to perform the duties assigned to it pursuant to this chapter including, but not limited to, utilization management and third party recovery for the medically indigent program.

(3) Implement a medicaid eligibility determination process for all potential applicants.

(4) Develop and implement by July 1, 2010, in cooperation with the Idaho association of counties and the Idaho hospital association, a uniform form to be used for both the initial review, pursuant to section 31-3503E, Idaho Code, and the application for financial assistance pursuant to section 31-3504, Idaho Code.

(5) Cooperate with the counties and the board in providing the services required of it pursuant to this chapter.

(6) Promulgate rules to implement its duties and responsibilities under the provisions of this chapter.

History.

I.C., § 31-3503C, as added by 2009, ch. 177, § 7, p. 558; am. 2010, ch. 273, § 5, p. 691.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 273, substituted "board" for "administrator" in subsection (5).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3503D. County participation and contribution. — Every county shall fully participate in the utilization management program and third party recovery system and shall contribute to the medicaid eligibility review, utilization management program and third party recovery costs incurred by the department pursuant to section 31-3503E, Idaho Code. The contribution of each county shall be calculated by the department as defined in rule.

History.
I.C., § 31-3503D, as added by 2009, ch. 177, § 7, p. 558.

STATUTORY NOTES

Legislative Intent.
Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3503E. Medicaid eligibility determination. — The department shall:

(1) Require the hospital to undertake an initial review of a patient upon stabilization to determine whether the patient may be medically indigent. If the hospital's initial review determines that the patient may be medically indigent, require that the hospital transmit a completed combined application for state and county medical assistance and a written request for medicaid eligibility determination to the department any time within thirty-one (31) days of the date of admission.

(2) Undertake a determination of possible medicaid eligibility upon receipt from the hospital of the completed combined application for state and county medical assistance and written request for medicaid eligibility determination. The department will use the medicaid eligibility guidelines in place as of the date of submission of the completed combined application for state and county medical assistance, apply categorical and financial eligibility requirements and use all sources available to the department to obtain verification in making the determination.

(3) In order to ascertain medicaid eligibility, require the patient or the obligated person to cooperate with the department according to its rules in investigating, providing documentation, submitting to an interview and notifying the department of the receipt of resources after the initial review form has been submitted to the department.

(4) Promptly notify the patient of medicaid eligibility.

(5) Act on the completed combined application for state and county medical assistance as an application for medicaid. An application for medicaid shall not be an application for financial assistance pursuant to section 31-3504, Idaho Code. Except as provided in this section, an application for financial assistance shall not be an application for medicaid.

(6) Utilize the verification and cooperation requirement in department rule to complete the eligibility determination.

(7) Notify the patient or the obligated person, the hospital or the clerk of a denial and the reason therefor. If, based on its medicaid eligibility review, the department determines that the patient is not eligible for medicaid, transmit a copy of the completed combined application for state and county medical assistance to the clerk. Denial of medicaid eligibility is not a determination of medical indigence.

(8) Make income and resource information obtained from the medicaid eligibility determination process available to the county to assist in determination of medical indigency at the time the department notifies the county of the final medicaid eligibility determination.

The completed combined application for state and county medical assistance shall be deemed consent for providers, the hospital, the department, respective counties and the board to exchange information pertaining to the applicant's health and finances for the purposes of determining medicaid eligibility or medical indigency.

History.
I.C., § 31-3503E, as added by 2009, ch. 177, § 7, p. 558; am. 2010, ch. 273, § 6, p. 691; am. 2011, ch. 291, § 7, p. 794.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, in the first sentence in subsection (5), added "for medicaid" at the end; and added the last paragraph.

The 2011 amendment, by ch. 291, substituted "completed combined application for state and county medical assistance" for "initial review" and "written request" throughout the section; in subsection (1), deleted "may be eligible for medicaid" twice after "the patient" substituted "within thirty-one days of the date of admission" for "within one (1) working day of the completion of the initial review"; rewrote subsection (4) which formerly read: "Promptly notify the hospital and clerk of potential medicaid eligibility and the basis of possible eligibility"; in subsection (5), deleted "if it appears that the patient may be eligible for medicaid" from the end of the first sentence and added the third sentence; rewrote subsection (7) which read "Notify the patient or the obligated person, the hospital and the clerk of a denial and the reason therefor if the applicant fails to cooperate, fails to provide documentation necessary to complete the determination or is determined to be categorically or financially ineligible for medicaid. If, based on its medicaid eligibility review, the department determines that the patient is not eligible for medicaid but may be medically indigent, transmit a copy of the initial review to the clerk. The transmitted copy of the initial review shall be treated by the clerk as an application for financial assistance pursuant to section 31-3504, Idaho Code. Denial of medicaid eligibility is not a determination of medical indigence."

Legislative Intent.
Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3503F. Medical home. — The department shall create by rule a community-based system in which a medically indigent patient may be referred to a medical home upon discharge from hospital. The medical home shall provide ongoing primary and preventive care and case management with periodic reports to the department regarding the medically indigent patient's health status and participation in the patient's treatment plan. Appropriate reimbursement to the medical home provider for patient primary and preventive care services employing utilization management and case management shall be coordinated by the department.

History.
I.C., § 31-3503F, as added by 2009, ch. 177, § 7, p. 558.

STATUTORY NOTES

Legislative Intent.
Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3504. Application for financial assistance. — (1) Except as pro-

vided for in section 31-3503E, Idaho Code, an applicant or third party applicant requesting assistance under this chapter shall complete a written application. The truth of the matters contained in the completed application shall be sworn to by the applicant or third party applicant. The completed application shall be deemed consent for the providers, the hospital, the department, respective counties and board to exchange information pertaining to the applicant's health and finances for the purposes of determining medicaid eligibility or medical indigency. The completed application shall be signed by the applicant or third party applicant, an authorized representative of the applicant, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant and filed in the clerk's office. If the clerk determines that the patient may be eligible for medicaid, within one (1) business day of the filing of the completed application in the clerk's office, the clerk shall transmit a copy of the application and a written request for medicaid eligibility determination to the department.

(a) If, based on its medicaid eligibility review, the department determines that the patient is eligible for medicaid, the department shall act on the application as an application for medicaid.

(b) If, based on its medicaid eligibility review, the department determines that the patient is not eligible for medicaid, the department shall notify the clerk of the denial and the reason therefor, in accordance with section 31-3503E, Idaho Code. Denial of medicaid eligibility is not a determination of medical indigence.

(2) If a third party completed application is filed, the application shall be presented in the same form and manner as set forth in subsection (1) of this section.

(3) Follow-up necessary medical services based on a treatment plan, for the same condition, preapproved by the county commissioners, may be provided for a maximum of six (6) months from the date of the original application without requiring an additional application; however, a request for additional treatment not specified in the approved treatment plan shall be filed with the clerk ten (10) days prior to receiving services. Beyond the six (6) months, requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services and an updated application may be requested by the county commissioners.

(4) Upon application for financial assistance pursuant to this chapter an automatic lien shall attach to all real and personal property of the applicant and on insurance benefits to which the applicant may become entitled. The lien shall also attach to any additional resources to which it may legally attach not covered in this section. The lien created by this section may be, in the discretion of the county commissioners and the board, perfected as to real property and fixtures by recording a document entitled: notice of lien and application for financial assistance, in any county recorder's office in this state in which the applicant and obligated person own property. The notice of lien and application for financial assistance shall be recorded as provided herein within thirty (30) days from receipt of an application, and such lien, if so recorded, shall have a priority date as of the date the

necessary medical services were provided. The lien created by this section may also be, in the discretion of the county commissioners and the board, perfected as to personal property by filing with the secretary of state within thirty (30) days of receipt of an application, a notice of application in substantially the same manner as a filing under chapter 9, title 28, Idaho Code, except that such notice need not be signed and no fee shall be required, and, if so filed, such lien shall have the priority date as of the date the necessary medical services were provided. An application for assistance pursuant to this chapter shall waive any confidentiality granted by state law to the extent necessary to carry out the intent of this section.

(5) In accordance with rules and procedures promulgated by the department or the board, each hospital and provider seeking reimbursement under this chapter shall submit all medical records and medical claims relevant to necessary medical services provided for an applicant in a standard or uniform format to the county clerk of the obligated county within ten (10) days after receiving a request from the county clerk; provided that, within the ten (10) day period if a provider presents a written request for suspension of the investigation, the investigation of the application shall be suspended for up to thirty (30) days. Upon receipt of the requested documentation, the investigation shall resume. A copy of the results of the reviewed medical records and medical claims shall be transmitted by the department's or the board's contractor to the clerk of the obligated county. Failure to provide the medical records and medical claims within the initial ten (10) day period and the suspension period, if any, shall result in denial of the application.

History.

I.C., § 31-3504, as added by 1996, ch. 410, § 7, p. 1357; am. 1997, ch. 92, § 1, p. 217; am. 2000, ch. 317, § 2, p. 1067; am. 2009, ch. 177, § 8, p. 558; am. 2010, ch. 273, § 7, p. 691; am. 2011, ch. 291, § 8, p. 794; am. 2013, ch. 279, § 3, p. 721.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in subsection (1), rewrote the first sentence, which formerly read: "An applicant requesting assistance under this chapter shall complete a written application on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association" and added the third sentence and last sentence; in subsection (2), substituted "practicable" for "practical" and "set forth in subsection (1) of this section" for "set forth above"; and, in subsection (4), substituted "not covered in this section" for "not covered above" in the second sentence and substituted "person" for "party" in the third sentence.

The 2010 amendment, by ch. 273, in the introductory paragraph in subsection (1), in the third sentence, inserted "providers" and "respective" and substituted "board" for "administrator," and in the fifth sentence, added "If the clerk determines that the patient may be eligible for medicaid" and inserted "and a written request for medicaid eligibility determination"; added paragraphs (1)(a) and (1)(b); in subsection (3), twice substituted "county commissioners" for "board"; in the third and fourth sentences in subsection (4), inserted "the county commissioners and"; and added subsection (5).

The 2011 amendment, by ch. 291, in the introductory paragraph in subsection (1), inserted "or third party applicant" three times, inserted "completed" preceding "application" four times, and inserted "an authorized representative of the applicant, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant" in the third sentence; inserted "completed" and deleted "as complete as practicable" following "the application shall be" in subsection (2); inserted "a document entitled: notice of lien and application for financial assistance" and deleted "a notice of application for medical

indecency benefits on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association" from the end of the present third sentence in subsection (4); and, inserted "or the board" or "or the board's" three times in subsection (5).

The 2013 amendment, by ch. 279, in subsection (5), substituted "medical records and medical claims" for "billings" twice, substituted "to the county clerk of the obligated county within ten(10) days after receiving a request from the county clerk" for "to the department's or the board's contractor for its utilization management review within ten (10) business days of receiving notification that the patient is not eligible for medicaid", substituted "within the ten (10) day period if a provider presents a written request for suspension of the investigation, investigation of the application shall be suspended for up to thirty (30) days" for "upon a showing of good cause, the time period may be extended", and added the second and fourth sentences.

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

JUDICIAL DECISIONS

Analysis

Construction.
Determination of indigency.

Construction.

Lien imposed on a debtor's property prepetition for payment of medical bills by a county, that were determined to be payable by the county after the debtor received a discharge, could remain in full force and effect because the lien was not avoidable in bankruptcy and was valid to secure payments that were thereafter advanced to the debtor. Johnson v. Stapelman (In re Johnson), 386 B.R. 272 (Bankr. D. Idaho 2008).

Pre-petition imposition of a lien on property owned by a debtor to protect a county that agreed post-petition to pay the debtor's medical expenses incurred at a county facility did not violate the debtor's rights under the United States Constitution under the Fourteenth Amendment because the debtor received adequate notice that a lien would automatically attach to his property and the debtor had a right to be heard on the issue. Johnson v. Stapelman (In re Johnson), 386 B.R. 272 (Bankr. D. Idaho 2008).

Bankruptcy court denied a Chapter 7 debtor's motion for an order avoiding a lien on real property she owned after she asked the county to pay the cost of medical treatment she received in 1998. The five-year limitation period that governed certain state liens under § 45-1906 did not apply to medical assistance liens filed under subsection (4) of this section, and even if the county's claim was no longer enforceable by legal action, the lien it placed on the debtor's property had not expired. In re Hendricks, 2010 Bankr. LEXIS 632 (Bankr. D. Idaho Mar. 1, 2010).

Determination of Indigency.

Denial of a third party medical indigency application was set aside as an abuse of discretion because the county failed to carry out its investigative duties by conducting only a minimal investigation and failing to issue a subpoena to the patient; the investigative duties were not alleviated simply because the patient refused to cooperate. University of Utah Hosp. v. Ada County Bd. of Comm'rs, 143 Idaho 808, 153 P.3d 1154 (2007).

31-3505. Time and manner of filing applications for financial assistance. — Applications for financial assistance shall be filed according to the following time limits. Filing is complete upon receipt by the clerk or the department.

(1) A completed application for nonemergency necessary medical services shall be filed with the clerk ten (10) days prior to receiving services from the provider or the hospital.

(2) A completed application for emergency necessary medical services shall be filed with the clerk any time within thirty-one (31) days beginning with the first day of the provision of necessary medical services from the provider, except as provided in subsection (3) of this section.

(3) In the case of hospitalization, a completed application for emergency necessary medical services shall be filed with the department any time within thirty-one (31) days of the date of admission.

(4) Requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services.

(5) A delayed application for necessary medical services may be filed up to one hundred eighty (180) days beginning with the first day of the provision of necessary medical services provided that:

(a) Written documentation is included with the application or no later than forty-five (45) days after an application has been filed showing that a bona fide application or claim has been filed for social security disability insurance, supplemental security income, third party insurance, medicaid, medicare, crime victims compensation, and/or worker's compensation. A bona fide application means that:

(i) The application was timely filed within the appropriate agency's application or claim time period; and

(ii) Given the circumstances of the patient and/or obligated persons, the patient and/or obligated persons, and given the information available at the time the application or claim for other resources is filed, would reasonably be expected to meet the eligibility criteria for such resources; and

(iii) The application was filed with the appropriate agency in such a time and manner that, if approved, it would provide for payment coverage of the bills included in the county application; and

(iv) In the discretion of the county commissioners, bills on a delayed application which would not have been covered by a successful application or timely claim to the other resource(s) may be denied by the county commissioners as untimely; and

(v) In the event an application is filed for supplemental security income, an Idaho medicaid application must also have been filed within the department of health and welfare's application or claim time period to provide payment coverage of eligible bills included in the county application.

(b) Failure by the patient and/or obligated persons to complete the application process described in this section, up to and including any reasonable appeal of any denial of benefits, with the applicable program noted in paragraph (a) of this subsection, shall result in denial of the application.

(6) No application for financial assistance under the county medically indigent program or the catastrophic health care cost program shall be approved by the county commissioners or the board unless the provider or the hospital completes the application process and complies with the time limits prescribed by this chapter.

(7) Any application or request which fails to meet the provisions of this section, and/or other provisions of this chapter, shall be denied.

(8) In the event that a county determines that a different county is obligated, such county shall notify the applicant or third party applicant of

the denial and shall also notify the county it believes to be the obligated county and provide the basis for the determination. An application may be filed by the applicant or third party applicant in the indicated county within thirty (30) days of the date of the initial county denial.

History.

I.C., § 31-3505, as added by 1996, ch. 410, § 8, p. 1357; am. 2000, ch. 317, § 3, p. 1067; am. 2004, ch. 300, § 2, p. 837; am. 2009, ch. 177, § 9, p. 558; am. 2010, ch. 273, § 8, p. 691; am. 2011, ch. 291, § 9, p. 794; am. 2013, ch. 279, § 4, p. 721; am. 2014, ch. 97, § 20, p. 265.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, added "or if a request for medicaid eligibility determination has been denied by the department pursuant to section 31-3503E, Idaho Code, within thirty-one (31) days of receiving notice of the denial" in subsection (2).

The 2010 amendment, by ch. 273, in the section heading, added "for financial assistance"; in the introductory language, substituted "financial assistance" for "necessary medical services"; and in paragraph (4)(a)(iv), twice substituted "county commissioners" for "board."

The 2011 amendment, by ch. 291, in the section heading and in the introductory paragraph, deleted "and requests" following "applications"; added "or the department" to the end of the introductory paragraph; in subsection (1), inserted "completed", "with the clerk", and "or the hospital"; rewrote subsection (2) as present subsections (2) and (3), and deleted the reference to a denial for medicaid eligibility; renumbered former subsections (3) and (4) as present subsections (4) and (5); inserted subsection (6); renumbered subsections (5) and (6) as present subsections (7) and (8); and, in subsection (8), added the language at the end of the first sentence beginning "shall notify the applicant" and inserted "by the applicant or third party applicant" in the last sentence.

The 2013 amendment, by ch. 279, deleted "county assistance" preceding "application" at the end of paragraph (5)(b) and substituted "chapter" for "section" at the end of subsection (6).

The 2014 amendment, by ch. 97, substituted "victims compensation" for "victim's compensation" at the end of the first sentence in the introductory language of paragraph (5)(a).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

JUDICIAL DECISIONS

First-party Insurance.

A delayed application for indigency assistance was properly denied because it was filed with a first-party insurance claim, which is not among the exhaustive list of resources in subsection (4) of this section. Kootenai Medical Ctr. v. Bonner County Bd. of Comm'rs (In re Kootenai Hospital District), 149 Idaho 290, 233 P.3d 1212 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

31-3505A. Investigation of application by the clerk. — (1) The clerk shall interview the applicant and investigate the information provided on the application, along with all other required information, in accordance with the procedures established by the county commissioners, the board and this chapter. The clerk shall promptly notify the applicant, or third party filing an application on behalf of an applicant, of any material information missing from the application which, if omitted, may cause the application to be denied for incompleteness. In addition, any provider requesting notification shall be notified at the same time. When necessary, such persons as may be deemed essential, may be compelled by the clerk to give testimony and

produce documents and other evidence under oath in order to complete the investigation. The clerk is hereby authorized to issue subpoenas to carry out the intent of this provision and to otherwise compel compliance in accordance with provisions of Idaho law.

(2) The applicant and third party filing an application on behalf of an applicant to the extent they have knowledge, shall have a duty to cooperate with the clerk in investigating, providing documentation, submitting to an interview and ascertaining eligibility and shall have a continuing duty to notify the obligated county of the receipt of resources after an application has been filed.

(3) The clerk shall have twenty (20) days to complete the investigation of an application for nonemergency necessary medical services.

(4) The clerk shall have forty-five (45) days to complete the investigation of an application for emergency necessary medical utilization management services or a portion thereof.

(5) In the case of follow-up treatment, the clerk shall have ten (10) days to complete an interview on a request for additional treatment to update the financial and other information contained in a previous application for an original diagnosis in accordance with a treatment plan previously approved by the county commissioners.

(6) Upon completion of the interview and investigation of the application or request, a statement of the clerk's findings shall be filed with the county commissioners. Such findings of indigency shall start on the date necessary medical services are first provided.

History.

I.C., § 31-3505A, as added by 1996, ch. 410, § 9, p. 1357; am. 2010, ch. 273, § 9, p. 691; am. 2011, ch. 291, § 10, p. 794; am. 2013, ch. 279, § 5, p. 721.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 273, in the section heading, deleted "or request" from the end; in the first sentence in subsection (1), inserted "the county commissioners"; in subsection (2), substituted "clerk" for "county" and "obligated county" for "responsible county"; and in subsections (5) and (6), substituted "county commissioners" for "board."

The 2011 amendment, by ch. 291, added "by the clerk" at the end of the section heading; substituted "The applicant and" for "The applicant or" at the beginning of subsection (2); inserted "utilization management" and "or a portion thereof" near the end of subsection (4).

The 2013 amendment, by ch. 279, added the last sentence in subsection (6).

JUDICIAL DECISIONS

Failure to Investigate.

Denial of a third party medical indigency application was set aside as an abuse of discretion because the county failed to carry out its investigative duties by conducting only a minimal investigation and failing to issue a subpoena to the patient; the investigative duties were not alleviated simply because the patient refused to cooperate. University of Utah Hosp. v. Ada County Bd. of Comm'rs, 143 Idaho 808, 153 P.3d 1154 (2007).

31-3505B. Approval by the county commissioners. — The county commissioners shall approve an application for financial assistance if it determines that necessary medical services have been or will be provided to

a medically indigent resident in accordance with this chapter; provided, the amount approved when paid, at the reimbursement rate, by the obligated county for any medically indigent resident shall not exceed the lesser of:

(1) The total sum of eleven thousand dollars ($11,000) in the aggregate per resident in any consecutive twelve (12) month period; or

(2) The reimbursement for services recommended by any or all of the utilization management activities pursuant to section 31-3502, Idaho Code.

History.

I.C., § 31-3505B, as added by 1996, ch. 410, § 10, p. 1357; am. 2009, ch. 177, § 10, p. 558; am. 2010, ch. 273, § 10, p. 691; am. 2011, ch. 291, § 11, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, substituted "eleven thousand dollars ($11,000)" for "ten thousand dollars ($10,000)".

The 2010 amendment, by ch. 273, substituted "county commissioners" for "board" at the beginning of the section.

The 2011 amendment, by ch. 291, added "by the county commissioners" in the section heading and rewrote the section, which formerly read: "The county commissioners shall approve an application for assistance if it determines that necessary medical services have been or will be provided to a medically indigent person in accordance with this chapter; provided, the amount paid by the county for any medically indigent resident shall not exceed in aggregate the sum of eleven thousand dollars ($11,000) per applicant for any consecutive twelve (12) month period."

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

JUDICIAL DECISIONS

Proving Indigency.

Denial of an application of medical indigency benefits on the ground that an applicant was an undocumented alien and, therefore, not a resident of the county was remanded to the county board of commissioners because the board failed to make findings on critical factors of eligibility, including indigency and medical necessity. Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008).

31-3505C. Initial decision by the county commissioners. — (1) Except as otherwise provided in subsection (2) of this section, the county commissioners shall make an initial determination to approve or deny an application within fifteen (15) days from receipt of the clerk's statement and within five (5) days from receiving the clerk's statement on a request. The initial determination to approve or deny an application shall be mailed to the applicant or the third party making application on behalf of the applicant, as the case may be, and each provider listed on the application within five (5) days of the initial determination.

(2) The county commissioners shall hold in suspension an initial determination to deny an application, if the sole basis for the denial is that the applicant may be eligible for other forms of public assistance, crime victims compensation, worker's compensation, veterans benefits, medicaid, medicare, supplemental security income, third party insurance or other insurance. The decision to hold an initial determination to deny an application in suspension shall be mailed to the applicant or the third party making

application on behalf of the applicant, as the case may be, and each provider listed on the application within five (5) days of the decision to suspend.

(a) If an applicant is subsequently determined to be eligible for other forms of public assistance, crime victims compensation, worker's compensation, veterans benefits, medicaid, medicare, supplemental security income, third party insurance or other insurance, the application shall be denied. The applicant or the third party making application on behalf of the applicant, as the case may be, and each provider listed on the application shall be notified within five (5) days of the denial.

(b) If an applicant is subsequently determined not to be eligible for other forms of public assistance, crime victims compensation, worker's compensation, veterans benefits, medicaid, medicare, supplemental security income, third party insurance or other insurance, the application for financial assistance shall be approved. The applicant or the third party making application on behalf of the applicant, as the case may be, and each provider listed on the application shall be notified within five (5) days of the approval.

(3) If the county commissioners hold in suspension an initial determination to deny an application, any time limitation used in this chapter shall be tolled and not deemed to run during the period of suspension.

History.
I.C., § 31-3505C, as added by 1996, ch. 410, § 11, p. 1357; am. 2010, ch. 273, § 11, p. 691; am. 2011, ch. 291, § 12, p. 794.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, added the subsection (1) designation; in the section heading and subsection (1), substituted "county commissioners" for "board"; in subsection (1), in the first sentence, added the exception, and substituted "determination to approve or deny an application" for "determination on an application," and in the last sentence, inserted "to approve or deny an application"; and added subsections (2) and (3).

The 2011 amendment, by ch. 291, substituted "third party insurance or other insurance" for "third party insurance or other available insurance" three times in subsection (2).

31-3505D. Appeal of initial determination denying an application. — An applicant, provider or third party applicant may appeal an initial determination of the county commissioners denying an application by filing a written notice of appeal with the county commissioners within twenty-eight (28) days of the date of the denial. If no appeal is filed within the time allowed, the initial determination of the county commissioners denying an application shall become final.

History.
I.C., § 31-3505D, as added by 1996, ch. 410, § 12, p. 1357; am. 2010, ch. 273, § 12, p. 691; am. 2011, ch. 291, § 13, p. 794.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, in the section heading, added "denying an application"; in the first sentence, deleted "adverse" preceding "initial determination," twice substituted "county commissioners" for "board," inserted "denying an application," and substituted "date of the denial" for "date of the

initial determination"; and in the last sentence, substituted "the initial determination of the county commissioners denying an application" for "the determination of the board."

The 2011 amendment, by ch. 291, substituted "An applicant, provider or third party applicant" for "An applicant or provider" at the beginning of the section.

JUDICIAL DECISIONS

Standing.

Medical center had standing to seek judicial review of the denial of an application for county medical assistance filed by a homeless man who received treatment at the medical center. Saint Alphonsus Reg'l Med. Cent. v. Ada County (In re Ferdig), 146 Idaho 862, 204 P.3d 502 (2009).

Cited in: Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008); St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'r (In re O'Brien), 146 Idaho 753, 203 P.3d 683 (2009).

31-3505E. Hearing on appeal of initial determination denying an application. — The county commissioners shall hold a hearing on the appeal within seventy-five (75) days of receipt of the notice of appeal. The hearing may be continued by the county commissioners for not more than forty-five (45) days from the date of the hearing to allow the applicant to produce additional information, documents, records, testimony or other evidence required in the discretion of the county commissioners or to allow a decision on eligibility of the applicant for benefits to be reached by another agency such as, but not limited to, the social security administration or the department. The hearing may be continued for additional periods by mutual stipulation of the county commissioners and the applicant. The county commissioners shall make a final determination within thirty (30) days of the conclusion of the hearing. The final determination of the county commissioners denying an application shall be mailed to the applicant, or the third party making application on behalf of an applicant, as the case may be and each provider listed on the application, within five (5) days of the date of the final determination.

History.

I.C., § 31-3505E, as added by 1996, ch. 410, § 13, p. 1357; am. 2010, ch. 273, § 13, p. 691.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 273, in the section heading, added "denying an application"; throughout the section, substituted "county commissioners" for "board"; and at the end of the second sentence, deleted "state of Idaho" and "of health and welfare" preceding and following "department" respectively.

31-3505F. Arbitration. — In the event that a county determines that a service is not a necessary medical service, a provider may submit the issue to a panel for arbitration as follows:

(1) Within thirty (30) days of the determination, the county commissioners and the provider shall each appoint one (1) licensed medical or osteopathic doctor with expertise in the condition treated or to be treated. The two (2) appointees shall jointly select a third medical or osteopathic licensed doctor with equivalent expertise. The panel shall review such

information as it deems necessary and render a decision within thirty (30) days as to whether the covered service is a necessary medical service.

(2) There shall be no judicial or other review or appeal of the findings of the panel. No party shall be obligated to comply with or otherwise be affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not deemed to run during the time that such a claim is pending before the panel and for thirty (30) days thereafter.

(3) Expenses incurred by the members of the panel in the performance of their duties will be borne by the respective parties making their appointment, and expenses of the third member shall be divided equally among the respective parties.

History.
I.C., § 31-3505F, as added by 1996, ch. 410, § 14, p. 1357; am. 2010, ch. 273, § 14, p. 691.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, substituted "county commissioners" for "board" in subsection (1).

31-3505G. Petition for judicial review of final determination. — If, after a hearing as provided in section 31-3505E, Idaho Code, the final determination of the county commissioners is to deny an application for financial assistance, the applicant, or a third party applicant, may seek judicial review of the final determination of the county commissioners in the manner provided in section 31-1506, Idaho Code.

History.
I.C., § 31-3505G, as added by 1996, ch. 410, § 15, p. 1357; am. 2010, ch. 273, § 15, p. 691; am. 2011, ch. 291, § 14, p. 794.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, twice substituted "county commissioners" for "board."

The 2011 amendment, by ch. 291, deleted "with necessary medical services" following "financial assistance" and substituted "or a third party applicant" for "or a third party making application on an applicant's behalf."

JUDICIAL DECISIONS

Analysis

Appeal.
Standing.

Appeal.
Petition for judicial review of a decision of a county board of commissioners, denying an application of medical indigency benefits on the ground that the applicant was not a resident of the county because she was an undocumented alien, was remanded to the board, because the board failed to make findings on critical factors of eligibility, including indigency and medical necessity. Mercy Med.

Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008) (see 2011 amendment).

Idaho legislature did not intend by the amendments to the Idaho Medical Indigency Act, § 31-3501 et seq., to overturn the Idaho supreme court's rulings in *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984), and *Intermountain Health Care, Inc. v. Board of County Comm'rs of Blaine County*, 109 Idaho 299, 707 P.2d 410 (1985), that medical care providers are real parties in interest which have standing to seek judicial review of adverse county medical application decisions. St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'r (In re O'Brien), 146 Idaho 753, 203 P.3d 683 (2009).

Standing.

Medical center had standing to seek judicial review of the denial of an application for county medical assistance filed by a homeless man who received treatment at the medical center. Saint Alphonsus Reg'l Med. Cent. v. Ada County (In re Ferdig), 146 Idaho 862, 204 P.3d 502 (2009).

Cited in: St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010).

31-3506. Obligated county. — The county obligated for payment shall be determined as follows:

(1) The obligated county for payment of pharmaceuticals for noninstitutionalized individuals shall be the county where the applicant currently resides.

(2) The obligated county for payment of necessary medical services for medical indigent individuals shall be as follows:

(a) The last county in which the applicant or head of household has maintained a residence for six (6) consecutive months or longer within the past five (5) years preceding incurrence shall be obligated. If the applicant or head of household maintains another residence in a different county or state for purposes of employment, the county where the family residence is maintained shall be deemed the applicant's or head of household's place of residence.

(b) If an individual has not resided in any county for a period of six (6) months within the five (5) years preceding incurrence of medical costs for which counties have a responsibility in whole or in part, then the county where the applicant maintained a residence for at least thirty (30) days immediately preceding such incurrence shall be the obligated county.

(c) Active military duty, or being admitted as a patient in a hospital, nursing home, other medical facility or institution, shall not change the obligated county. The county obligated shall remain the same county that would have been obligated prior to institutionalization as above described.

(d) For full-time students at public institutions of higher learning, the obligated county shall be the county of residence of the applicant unless an obligated person, for whom the applicant is claimed as a dependent, resides in another county or state.

(e) If an individual has not resided in any county for a consecutive period of thirty (30) days but has resided in the state of Idaho for a consecutive period of thirty (30) days then the county where the individual last resided prior to receiving medical services shall be the obligated county.

History.

I.C., § 31-3506, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 9, p. 462; am. 1988, ch. 332, § 3, p. 994; am. 1989, ch. 193, § 3, p. 475; am. 1996, ch. 410, § 16, p. 1357; am. 2000, ch. 317, § 4, p. 1067; am. 2008, ch. 189, § 1, p. 593.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 189, substituted "preceding incurrence" for "preceding application" in the first sentence in paragraph (2)(a).

31-3507. Transfer of a medically indigent patient. — An obligated county or the board shall have the right to have an approved medically indigent resident transferred to a hospital or facility, in accordance with requirements of the federal emergency medical treatment and active labor act, 42 U.S.C., section 1395dd; provided however, treatment for the necessary medical service must be available at the designated facility, and the county contract physician, or the attending physician if no county contract physician is available, must certify that the transfer of such person would not present a significant risk of further injury. The obligated county, the board, and hospital from which or to which a person is taken or removed as herein provided, as well as the attending physician(s), shall not be liable in any manner whatsoever and shall be immune from suit for any causes of action arising from a transfer performed in accordance with this section. The immunities and freedom from liability granted pursuant to this section shall extend to any person, firm or corporation acting in accordance with this section.

History.

I.C., § 31-3507, as added by 1996, ch. 410 § 17, p. 1357; am. 2009, ch. 177, § 11, p. 558; am. 2010, ch. 273, § 16, p. 691; am. 2011, ch. 291, § 15, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, throughout the section, inserted "the department and" or similar language; and in the introductory paragraph in subsection (1), substituted "within one (1) working day of its initial review determination pursuant to section 31-3503E, Idaho Code, that the patient is potentially medically indigent" for "within one (1) working day of identifying a patient as potentially medically indigent" and deleted "of admission" following "notice".

The 2010 amendment, by ch. 273, in the section heading, deleted "notice of admission and" from the beginning; deleted subsection (1), which dealt with hospital notification requirements; deleted the subsection (2) designation from the remaining provisions of the section; in the first sentence, substituted "An obligated county or the board" for "The department, a county or administrator," and deleted "the department and" preceding "the county contract physician," and in the second sentence, substituted "The obligated county, the board" for "The department, the county, the administrator."

The 2011 amendment, by ch. 291, substituted "indigent resident" for "indigent person" in the first sentence.

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3508. Limitations on payments for necessary medical services. — (1) Each hospital and provider seeking reimbursement under the provisions of this chapter shall fully participate in the utilization management program and third party recovery system.

(2) The board and the county shall determine the amount to be paid based on the application of the appropriate reimbursement rate to those medical services determined to be necessary medical services. The board may use

contractors to undertake utilization management review in any part of that analysis. The bill submitted for payment shall show the total provider charges less any amounts which have been received under any other federal or state law. Bills of less than twenty-five dollars ($25.00) shall not be presented for payment.

History.

I.C., § 31-3508, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 10, p. 462; am. 1983, ch. 215, § 3, p. 594; am. 1996, ch. 410, § 18, p. 1357; am. 2009, ch. 177, § 12, p. 558; am. 2010, ch. 273, § 17, p. 691; am. 2011, ch. 291, § 16, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in the first sentence, substituted "not to exceed the amount recommended by the utilization management program and the current medicaid rate" for "not to exceed the reimbursement rates to the provider rendering such services" and, in the second sentence, deleted "pursuant to section 31-3519, Idaho Code" following "payment".

The 2010 amendment, by ch. 273, rewrote the section heading, which formerly read: "Amount of aid for necessary medical services"; added subsection (1) and the subsection (2) designation, and therein, inserted "board and the" near the beginning.

The 2011 amendment, by ch. 291, rewrote subsection (2), which formerly read: "The board and the county responsible for payment of necessary medical services of a medically indigent person shall pay an amount not to exceed the amount recommended by the utilization management program and the current medicaid rate. The bill submitted for payment shall show the total provider charges less any amounts which have been received under any other federal or state law. Bills of less than twenty-five dollars ($25.00) shall not be presented for payment."

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3508A. Payment for necessary medical services by an obligated county. — (1) Upon receipt of a final determination by the county commissioners approving an application for financial assistance under the provisions of this chapter, an applicant, or the third party applicant on behalf of the applicant, shall, within sixty (60) days, submit any remaining medical claims pursuant to the procedures provided in chapter 15, title 31, Idaho Code.

(2) Payment shall be made to hospitals or providers on behalf of an applicant and shall be made on the next payment cycle. In no event shall payment be delayed longer than sixty (60) days from receipt of the county claim.

(3) Payment to a hospital or provider pursuant to this chapter shall be payment of the debt in full and the provider or hospital shall not seek additional funds from the applicant.

(4) Within fourteen (14) days after the county payment, the clerk of the obligated county shall forward to the board any application for financial assistance exceeding, at the reimbursement rate, the total sum of eleven thousand dollars ($11,000) in the aggregate per resident in any consecutive twelve (12) month period. A copy of the clerk's findings, the final decision of the county commissioners and a statement of which costs the clerk has paid shall be forwarded with the application to the board.

History.
I.C., § 31-3508A, as added by 2011, ch. 291, § 17, p. 794; am. 2013, ch. 279, § 6, p. 721.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 279, substituted "any remaining medical claims" for "a medical claim" near the end of subsection (1).

31-3509. Administrative offsets and Collections by hospitals and providers. — (1) Providers and hospitals shall accept payment made by an obligated county or the board as payment in full. Providers and hospitals shall not bill an applicant or any other obligated person for services that have been paid by an obligated county or the board pursuant to the provisions of this chapter for any balance on the amount paid.

(2) Hospitals and providers making claims for reimbursement of necessary medical services provided for medically indigent residents shall make all reasonable efforts to determine liability and attempt to collect for the account so incurred from all resources prior to submitting the bill to the county commissioners for review. In the event that a hospital or a provider has been notified that a recipient is retrospectively eligible for benefits or that a recipient qualifies for approval of benefits, such hospital(s) or provider(s) shall submit or resubmit a bill to third party insurance, medicaid, medicare, supplemental security income, crime victims compensation, worker's compensation, other insurance and/or other third party sources for payment within thirty (30) days of such notice. A hospital shall apply pursuant to section 1011 of the medicare modernization act of 2003 if funds are available or provide proof that funds are no longer available. In the event any payments are thereafter received for charges which have been paid by a county and/or the board pursuant to the provisions of this chapter, said sums up to the amount actually paid by the county and/or the board shall be paid over to such county and/or board within sixty (60) days of receiving such payment from other resources.

(3) Any amount paid by an obligated county or the board under the provisions of this chapter, which amount is subsequently determined to have been an overpayment, shall be an indebtedness of the hospital or provider due and owing to the obligated county and the board. Such indebtedness may include circumstances where the applicant is subsequently determined to be eligible for third party insurance, medicaid, medicare, supplemental security income, crime victims compensation, worker's compensation, other insurance or other third party sources.

(4) The obligated county and the board shall have a first lien prorated between such county and the board in proportion to the amount each has paid. The obligated county and the board may request a refund from a hospital or provider in the amount of the overpayment, or after notice, recover such indebtedness by deducting from and setting off the amount of the overpayment to a hospital or provider from any outstanding amount or amounts due and payable to the same hospital or provider pursuant to the provisions of this chapter.

History.

I.C., § 31-3509, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 11, p. 462; am. 1992, ch. 83, § 5, p. 256; am. 1996, ch. 410, § 19, p. 1357; am. 2000, ch. 317, § 5, p. 1067; am. 2009, ch. 177, § 13, p. 558; am. 2010, ch. 273, § 18, p. 691; am. 2011, ch. 291, § 18, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in the first sentence, substituted "department for review" for "county for payment"; in the next-to-last sentence, substituted "paid over to the department" for "paid over to such county and/or administrator"; and added the last sentence.

The 2010 amendment, by ch. 273, rewrote the section heading, which formerly read: "Collections by providers"; added subsections (1), (3), and (4); and added the subsection (2) designation, and therein, in the first sentence, added "Hospitals and," inserted "reimbursement of" and "and attempt to collect," and substituted "services provided for" for "services of," "incurred from all resources" for "incurred from any available insurance or other sources available for payment of such expenses," and "county commissioners" for "department," in the second sentence, inserted "a hospital or," "a recipient is retrospectively eligible for benefits or that," "hospital(s) or," "or resubmit," and "supplemental security income," and substituted "a recipient qualifies" for "an individual qualifies," in the last sentence, twice substituted "board" for "administrator" and "such county and/or board" for "the department," and deleted the former last sentence, which read: "The department shall distribute the payment to the county and/or administrator pursuant to section 31-3510A, Idaho Code."

The 2011 amendment, by ch. 291, inserted "and hospitals" following "Providers" twice in subsection (1); in subsection (2), substituted "indigent residents" for "indigent persons" in the first sentence; inserted "other insurance and/or other third party sources" near the end of the second sentence, and added the third sentence.

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

Federal References.

Section 1011 of the medicare modernization act of 2003, referred to in subsection (2), is § 1011 of P.L. 108-173, which appears in a note following 42 USCS § 1395dd.

JUDICIAL DECISIONS

Analysis

Liability.
—Determination.

Liability.

—Determination.

Under this section, a provider need not seek payment from the federal Hill-Burton program prior to submitting a bill to the county for reimbursement for treatment of a indigent. St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 150 Idaho 484, 248 P.3d 735 (2011).

31-3510. Right of subrogation. — (1) Upon payment of a claim for necessary medical services pursuant to this chapter, the obligated county and the board making such payment shall become jointly subrogated to all the rights of the hospital and other providers and to all rights of the medically indigent resident against any third parties who may be the cause of or liable for such necessary medical services. The board may pursue collection of the county's and the board's subrogation interests.

(2) Upon any recovery by the recipient against a third party, the obligated county and the board shall pay or have deducted from their respective subrogated portion thereof, a proportionate share of the costs and attorney's fees incurred by the recipient in obtaining such recovery, provided that such

proportionate share shall not exceed twenty-five percent (25%) of the subrogated interest unless one (1) or more of the following circumstances exist:

(a) Otherwise agreed.

(b) If prior to the date of a written retention agreement between the recipient and an attorney, the obligated county and the board have reached an agreement with the third party, in writing, agreeing to pay in full the county and the board's subrogated interest.

(3) The obligated county and the board shall have joint subrogated interests in proportion to the amount each has paid.

History.

I.C., § 31-3510, as added by 1974, ch. 302, § 12, p. 1769; am. 1996, ch. 410, § 20, p. 1357; am. 2009, ch. 177, § 14, p. 558; am. 2010, ch. 273, § 19, p. 691; am. 2011, ch. 291, § 19, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, added the last sentence.

The 2010 amendment, by ch. 273, added the subsection (1) designation, and therein, in the first sentence, substituted "the obligated county and the board" for "the county and the catastrophic health care costs program," and in the last sentence, substituted "board" for "department" and "board's" for "administrator's"; and added subsection (2).

The 2011 amendment, by ch. 291, in subsection (1) inserted "jointly" preceding "subrogated" and substituted "indigent resident" for "indigent person"; and added subsection (3).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3510A. Reimbursement. — (1) Receipt of financial assistance pursuant to this chapter shall obligate an applicant to reimburse the obligated county and the board for such reasonable portion of the financial assistance paid on behalf of the applicant as the county commissioners may determine that the applicant is able to pay from resources over a reasonable period of time. Cash amounts received shall be prorated between the county and the board in proportion to the amount each has paid.

(2) A final determination shall not relieve the applicant's duty to make additional reimbursement from resources if the county commissioners subsequently find within a reasonable period of time that there has been a substantial change in circumstances such that the applicant is able to pay additional amounts up to the total claim paid on behalf of the applicant.

(3) A final determination shall not prohibit the county commissioners from reviewing a petition from an applicant to reduce an order of reimbursement based on a substantial change in circumstances.

(4) The automatic lien created pursuant to the chapter may be filed and recorded in any county of this state wherein the applicant has resources and may be liquidated or unliquidated in amount. Nothing herein shall prohibit an applicant from executing a consensual lien in addition to the automatic lien created by filing an application pursuant to this chapter. In the event that resources can be located in another state, the clerk may file the lien with the district court and provide notice to the recipient. The recipient shall

have twenty (20) days to object, following which the district court shall enter judgment against the recipient. The judgment entered may thereafter be filed as provided for the filing of a foreign judgment in that jurisdiction.

(5) The county shall have the same right of recovery as provided to the state of Idaho pursuant to sections 56-218 and 56-218A, Idaho Code.

(6) The county commissioners may require the employment of such of the medically indigent as are capable and able to work and whose attending physician certifies they are capable of working.

(7) That portion of the moneys received by a county as reimbursement that are not assigned to the catastrophic health care cost program shall be credited to the respective county medically indigent fund.

(8) If, after a hearing, the final determination of the county commissioners is to require a reimbursement amount or rate the applicant believes excessive, the applicant may seek judicial review of the final determination of the county commissioners in the manner provided in section 31-1506, Idaho Code.

History.

I.C., § 31-3510A, as added by 1983, ch. 215, § 4, p. 594; am. 1996, ch. 410, § 21, p. 1357; am. 2008, ch. 189, § 2, p. 594; am. 2010, ch. 273, § 20, p. 691; am. 2011, ch. 291, § 20, p. 794.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 189, rewrote subsection (7), which formerly read: "Money's received by a county as reimbursement shall be credited to the county indigent fund and need not be budgeted or appropriated in the manner required by chapter 16, title 31, Idaho Code, but shall be available for expenditure at any time for the purposes of the county indigent fund."

The 2010 amendment, by ch. 273, throughout the section, substituted "county commissioners" for "board"; in subsection (1), in the first sentence, substituted "board" for "catastrophic health care costs program," and in the last sentence, substituted "board" for "state."

The 2011 amendment, by ch. 291, substituted "obligated county" for "county from which assistance is received" in the first sentence in subsection (1) and substituted "not assigned to the catastrophic health care cost program shall be credited to the respective county medically indigent fund" for "not assigned to the state catastrophic health care fund shall be credited to the county indigent fund" in subsection (7).

JUDICIAL DECISIONS

Resources.

When paragraphs (1) and (6) are read together, it is clear that the legislature intended for the potential income of an able-bodied person to be considered as a "resource" from which that person may be obligated to reimburse a county when the county pays for necessary services to the person. St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010).

31-3511. Violations and penalties. — (1) Any applicant or obligated person who willfully gives false or misleading information to the department, board, a hospital, a county or an agent thereof, or to any individual in order to obtain financial assistance under this chapter as or for a medically indigent resident, or any person who obtains financial assistance as a medically indigent resident who fails to disclose insurance, worker's compensation, resources, or other benefits available to him as payment or reimbursement of such expenses incurred, shall be guilty of a misdemeanor

and punishable under the general provisions for punishment of a misdemeanor. In addition, any applicant or obligated person who fails to cooperate with the department, board or a county or makes a material misstatement or material omission to the department in a request for medicaid eligibility determination, pursuant to section 31-3504, Idaho Code, or a county in an application pursuant to this chapter shall be ineligible for nonemergency assistance under this chapter for a period of two (2) years.

(2) Neither the county commissioners nor the board shall have jurisdiction to hear and shall approve a completed application for necessary medical services unless an application in the form prescribed by this chapter is received by the clerk or the board in accordance with the provisions of this chapter.

(3) The county commissioners may deny an application if material information required in the application or request is not provided by the applicant or a third party or if the applicant has divested himself or herself of resources within one (1) year prior to filing an application in order to become eligible for assistance pursuant to this chapter. An applicant who is sanctioned by federal or state authorities and loses medical benefits as a result of failing to cooperate with the respective agency or making a material misstatement or material omission to the respective agency shall be ineligible for assistance pursuant to this chapter for the period of such sanction.

(4) If the county commissioners fail to act upon an application within the timelines required under this chapter, the application shall be deemed approved and payment made as provided in this chapter.

(5) An applicant may appeal a decision rendered by the county commissioners pursuant to this section in the manner provided in section 31-1506, Idaho Code.

History.

I.C., § 31-3511, as added by 1974, ch. 302, § 12, p. 1769; am. 1976, ch. 121, § 12, p. 462; am. 1996, ch. 410, § 22, p. 1357; am. 2009, ch. 177, § 15, p. 558; am. 2010, ch. 273, § 21, p. 691; am. 2011, ch. 291, § 21, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in subsection (1), inserted "the department" in the first sentence and inserted "the department or" and "the department in a request for medicaid eligibility determination, pursuant to section 31-3503E, Idaho Code, or" in the last sentence.

The 2010 amendment, by ch. 273, in subsections (2) through (5), substituted "board" for "county commissioners"; and in subsection (1), in the first sentence, inserted "board" near the beginning, and in the last sentence, inserted "or obligated person" and "board," and updated the section reference.

The 2011 amendment, by ch. 291, in subsection (1), substituted "financial assistance" for "necessary medical services" twice and substituted "indigent resident" for "indigent person" twice; in subsection (2), inserted "nor the board" and "or the board" and inserted "completed" preceding "application."

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

JUDICIAL DECISIONS

Actions Constituting Denial.

Petition for judicial review of a decision of a county board of commissioners, denying an application of medical indigency benefits on the ground that the applicant was not a resident of the County because she was an undocumented alien, was remanded to the board, because the board failed to make findings on critical factors of eligibility, including indigency and medical necessity. Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008).

Cited in: In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

31-3512. Joint county hospitals. — Recognizing the need of hospitals for the public welfare and the burden for one (1) county to finance the cost of such construction, operation and maintenance thereof within its own boundaries under certain circumstances, the county commissioners in their respective counties shall have the power to jointly and severally enter into contracts or agreements with one (1) or more adjoining counties to construct, operate and maintain joint county hospitals, either within or without the boundaries of such counties, upon a finding of each such county commissioners that there is a public necessity requiring the financing of such hospital facilities jointly with one (1) or more adjoining counties. The county commissioners shall have the same powers to operate, finance and bond for such joint county hospitals as they would have for a county hospital.

History.

I.C., § 31-3512, as added by 1974, ch. 302, § 12, p. 1769; am. 2010, ch. 273, § 22, p. 691.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 273, in the first and last sentence, deleted "boards of" preceding "county commissioners," and in the first sentence, substituted the second occurrence of "county commissioners" for "board."

31-3513. Election for issuance of bonds. — The county commissioners may, when they deem the welfare of their counties require it, or when petitioned thereto by a number of resident taxpayers of their respective counties equal to five percent (5%) of the number of persons voting for the secretary of state of the state of Idaho, at the election next preceding the date of such petition, submit to the qualified electors of said county at any election held as provided in section 34-106, Idaho Code, the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing such hospital, hospital grounds, nurses' homes, nursing homes, residential or assisted living facilities, shelter care facilities, medical clinics, superintendent's quarters, or any other necessary buildings, and equipment, and may on their own initiative submit to the qualified electors of the county at any general election the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing for the extension and enlargement of existing hospital, hospital grounds, nurses' homes, nursing homes, residential or assisted living facilities, shelter care facilities, medical clinics or grounds,

superintendent's quarters, or any other necessary buildings, and equipment, and when authorized thereto by two-thirds (2/3) vote at such election, shall issue and sell such coupon bonds and use the proceeds therefrom for the purposes authorized by such election. Said proposition may be submitted to the qualified electors at an election held subject to the provisions of section 34-106, Idaho Code, if the county commissioners shall by resolution so determine. No person shall be qualified to vote at any election held under the provisions of this section unless he shall possess all the qualifications required of electors under the general laws of this state.

The county commissioners shall be governed in calling and holding such election and in the issuance and sale of such bonds, and in the providing for the payment of the principal and interest thereon by the provisions of chapter 19, title 31, Idaho Code, and by the provisions of chapter 2, title 57, Idaho Code; provided, however, that when such bonds have been issued and sold and a period of two (2) years or more has elapsed from the date of sale of said bonds and for any reason the proceeds from the sale of said bonds or other moneys appropriated for the purpose for which said bonds were issued, have not been used for the purpose for which they were appropriated or said bond issue made, the county commissioners may, with the written consent of all of the bondholders first having been obtained, submit to the qualified electors, as herein defined, the question of spending such moneys for a definite purpose. The purpose for which it is decided to spend such moneys shall be clearly and plainly stated on the ballot. If a majority of the qualified electors shall vote in favor of spending such moneys for the purpose stated, the county commissioners shall proceed in the same manner as if such different purpose had been the original purpose for such bond issue or appropriation. Provided, further that if less than a majority of the qualified electors shall vote in favor of spending such moneys for such different purpose, or if no such election should be had, when all of the bonds shall have been retired, such excess moneys shall be placed in the general fund.

History.

I.C., § 31-3513, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 4, p. 410; am. 1989, ch. 193, § 4, p. 475; am. 1993, ch. 112, § 3, p. 283; am. 1995, ch. 118, § 33, p. 417; am. 2000, ch. 274, § 4, p. 799; am. 2010, ch. 273, § 23, p. 691.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 273, in the next-to-last sentence in the first paragraph, deleted "board of" preceding "county commissioners"; and in the last paragraph, in the first sentence, twice substituted "county commissioners" for "board" and substituted "chapter 19, title 31" for "sections 31-1901 though 31-1909," and in the third sentence, deleted "board of" preceding "county commissioners."

31-3514. Internal management — Accounts and reports. — Such facilities as referred to in section 31-3503(2), Idaho Code, may suitably provide for and accept other patients and must charge and accept payments from such other patients as are able to make payments for services rendered and care given. The county commissioners may make suitable rules and regulations for the management and operation of such property by a

suitable board of control, or otherwise, or for carrying out such hospital uses and purposes under a lease of the same.

The boards or officers or lessees of such hospital property shall render accounts and reports to the county commissioners as may be required by the county commissioners; and shall render accounts and deliver over any and all moneys received by them for the county to the county treasurer to be credited to the operation expense of hospitals and indigent sick and otherwise dependent poor of the county in such manner as provided by law for the handling of funds of this kind.

Said board of control may permit persons from out of the county where such hospital is located to be admitted for hospitalization to such hospital. As to such cases special rates for the use and service of such hospital may be provided which rates shall apply equally to all such patients who do not pay taxes within the county where such hospital is located. The purpose of providing such special rates shall be to compel persons living out of the county where such hospital is located, and who receive hospitalization in such hospital, to bear a just burden of the cost of construction and maintenance of such hospital.

History.
I.C., § 31-3514, as added by 1974, ch. 302, § 12, p. 1769; am. 1980, ch. 185, § 5, p. 410; am. 1982, ch. 340, § 10, p. 851; am. 1989, ch. 193, § 5, p. 475; am. 1993, ch. 112, § 4, p. 283; am. 2010, ch. 273, § 24, p. 691.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, in the last sentence in the first paragraph, deleted "boards of" preceding "county commissioners"; and in the second paragraph, substituted "county commissioners" for "board."

31-3515. Lease or sale. — Such counties acting through their county commissioners shall have the right to lease such hospitals upon such terms and for such a length of time as they may decide, or to sell the same; provided, however, that no such lease or sale, except those leases entered into between such counties and the Idaho health facilities authority as provided in section 31-836, Idaho Code, shall be final or valid unless and until it has been approved by a majority of the qualified electors of said county voting on such question at an election held subject to the provisions of section 34-106, Idaho Code; except if a hospital district has been created under the provisions of chapter 13, title 39, Idaho Code, county commissioners shall have the right to lease, as provided in section 31-836, Idaho Code, such hospitals within a created hospital district to the hospital district without submitting the question of lease or sale to the qualified electors of the county or the respective hospital district.

History.
I.C., § 31-3515, as added by 1974, ch. 302, § 12, p. 1769; am. 1978, ch. 42, § 2, p. 75; am. 1980, ch. 57, § 1, p. 115; am. 1995, ch. 118, § 34, p. 417; am. 2010, ch. 273, § 25, p. 691.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 273, twice deleted "boards of" or similar language preceding "county commissioners."

31-3515A. Conveyance, lease of county hospital to nonprofit corporation. — (1) As an alternative to the procedure set forth in section 31-3515, Idaho Code, counties acting through their respective county commissioners may convey or lease county hospitals, and the equipment therein, subject to the following conditions:

(a) The entity to which the hospital is to be transferred shall be a nonprofit corporation;

(b) No lease term shall exceed ninety-nine (99) years. This subsection supersedes that part of section 31-836, Idaho Code, which is inconsistent herewith;

(c) The governing body of the nonprofit corporation must be composed initially of the incumbent members of the board of hospital trustees, as individuals. The articles of incorporation must provide for a membership of the corporation which is:

(i) Broadly representative of the public and includes residents of each incorporated city in the county and of the unincorporated area of the county; or

(ii) A single nonprofit corporate member having articles of incorporation which provide for a membership of that corporation which is broadly representative of the public and includes residents of each incorporated city in the county and of the unincorporated area of the county.

The articles must further provide for the selection of the governing body by the membership of the corporation, or exclusively by a parent corporation which is the corporate member, with voting power, and not by the governing body itself, except to fill a vacancy for the unexpired term. The articles must further provide that no member of the governing body shall serve more than two (2) consecutive three (3) year terms.

(d) The nonprofit corporation must provide care for indigent patients, and receive any person falling sick or maimed within the county.

(e) The transfer agreement must provide for the transfer of patients, staff and employees, and for the continuing administration of any trusts or bequests or maintenance of records pertaining to the existing public hospital.

(f) The transfer or lease agreement shall provide for a transfer or lease price which shall be either of the following:

(i) The acceptance of all assets and assumption of all liabilities; or

(ii) Such other price as the commissioners and the nonprofit corporation may agree.

(2) If any hospital which has been conveyed pursuant to this section ceases to be used as a nonprofit hospital, unless the premises so conveyed are sold and the proceeds used to erect or enlarge another nonprofit hospital for the county, the hospital so conveyed reverts to the ownership of the county. If any hospital which has been leased pursuant to this section ceases to be used as a nonprofit hospital, the lease shall terminate.

(3) The provisions of section 31-808, Idaho Code, with respect to the sale and disposition of real and personal property owned by the county, shall not apply to transactions covered by section 31-3515, Idaho Code, and this section.

History.
I.C., § 31-3515A, as added by 1986, ch. 240, § 1, p. 652; am. 2010, ch. 273, § 26, p. 691.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, deleted "boards of" preceding "county commissioners" in the introductory paragraph in subsection (1).

31-3517. Establishment of a catastrophic health care cost program. — (1) The governing board of the catastrophic health care cost program created by the counties pursuant to a joint exercise of powers agreement, dated October 1, 1984, and serving on June 30, 1991, is hereby continued as such through December 31, 1992, to complete the affairs of the board, to continue to pay for those medical costs incurred by participating counties prior to October 1, 1991, until all costs are paid or the moneys in the catastrophic health care cost account contributed by participating counties are exhausted, and to pay the balance of such contributions back to the county of origin in the proportion contributed. County responsibility shall be limited to the first eleven thousand dollars ($11,000) per claim. The remainder of the eligible costs of the claim shall be paid by the state catastrophic health care cost program.

(2) Commencing October 1, 1991, a catastrophic health care cost program board is hereby established for the purpose of administering the catastrophic health care cost program. This board shall consist of twelve (12) members, with six (6) county commissioners, one (1) from each of the six (6) districts or regions established by the Idaho association of counties, four (4) members of the legislature, with one (1) each being appointed by the president pro tempore of the senate, the leader of the minority party of the senate, the speaker of the house of representatives and the leader of the minority party of the house of representatives, one (1) member appointed by the director of the department and one (1) member appointed by the governor.

(a) The county commissioner members shall be elected by the county commissioners of the member counties of each district or region, with each board of county commissioners entitled to one (1) vote. The process and procedures for conducting the election and determining the members shall be determined by the board itself, except that the election must be conducted, completed and results certified by December 31 of each year in which an election for members is conducted. The board recognized in subsection (1) of this section shall authorize and conduct the election in 1991.

(b) The term of office of a member shall be two (2) years, commencing on January 1 next following election or appointment, except that for com-

missioner members elected in 1991, the commissioner members from districts or regions 1, 3 and 5 shall serve for a term of one (1) year, and the commissioner members from districts or regions 2, 4 and 6 shall serve for a term of two (2) years. Members may be reelected or reappointed. Election or appointment to fill vacancies shall be for the balance of the unexpired term.

(c) The board shall have an executive committee consisting of the chair, vice-chair, secretary and such other members of the board as determined by the board. The executive committee may exercise such authority as may be delegated to it by the board between meetings.

(d) The member appointed by the governor shall be reimbursed as provided in section 59-509(b), Idaho Code, from the catastrophic health care cost account.

(3) The board shall meet at least once each year at the time and place fixed by the chair. Other necessary meetings may be called by the chair by giving notice as may be required by state statute or rule. Notice of all meetings shall be given in the manner prescribed by law.

(4) Except as may otherwise be provided, a majority of the board constitutes a quorum for all purposes and the majority vote of the members voting shall constitute the action of the board. The secretary of the board shall take and maintain the minutes of board proceedings. Meetings shall be open and public except the board may meet in closed session to prepare, approve and administer applications submitted to the board for approval by the respective counties.

(5) At the first meeting of the board in January of each year, the board shall organize by electing a chair, a vice-chair, a secretary and such other officers as desired.

(6) [catastrophic health care cost] All moneys received or expended by the program shall be audited annually by a certified public accountant designated by the governing board, who shall furnish a copy of such audit to the director of legislative services.

(7) The board shall submit a request to the governor and the legislature in accordance with the provisions of chapter 35, title 67, Idaho Code, for an appropriation for the maintenance and operation of the catastrophic health care cost program.

History.

I.C., § 31-3517, as added by 1982, ch. 190, § 3, p. 511; am. 1991, ch. 233, § 11, p. 553; am. 1992, ch. 266, § 1, p. 821; am. 1993, ch. 387, § 4, p. 1417; am. 1995, ch. 9, § 2, p. 14; am. 2009, ch. 177, § 16, p. 558; am. 2010, ch. 273, § 27, p. 691; am. 2011, ch. 174, § 1, p. 495; am. 2011, ch. 291, § 22, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, in subsection (1), substituted "eleven thousand dollars ($11,000)" for "ten thousand dollars ($10,000)"; in the last sentence in the introductory paragraph in subsection (2), substituted "twelve (12) members" for "seven (7) members" and inserted the language beginning "four (4) members of the legislature" and ending "department of health and welfare"; in subsection (2)(a), inserted the first occurrence of "county"; in subsection (2)(c), inserted "appointed by the governor" and substituted "reimbursed" for "compensated"; rewrote subsection (3), which related to powers and duties of the administrator, including causing a full and complete audit under section 67-450B.

The 2010 amendment, by ch. 273, in para-

graph (2)(a), deleted "boards of" preceding the first occurrence of "county commissioners"; and in subsection (4), substituted "board" for "administrator."

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 174, rewrote subsection (6), which formerly read: "The legislative council shall cause a full and complete audit of the financial statements of the program as required in section 67-702, Idaho Code"; and inserted "cost" in subsection (7).

The 2011 amendment, by ch. 291, inserted paragraph (2)(c) and present subsections (3) and (4), making necessary redesignations in subsequent subsections and paragraphs; inserted "secretary" in subsection (5); substituted "catastrophic health care cost program" for "catastrophic health care program" in subsection (7).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

Compiler's Notes.

The bracketed insertion in subsection (6) was added by the compiler to account for surplus language following the conformance of the 2011 amendments.

31-3518. Administrative responsibility. — (1) The board shall, in order to facilitate payment to providers participating in the county medically indigent program and the catastrophic health care cost program, have on file the reimbursement rates allowed for all participating providers of medical care and authorized by this chapter. However, in no event shall the amount to be paid exceed the usual, reasonable, and customary charges for the area.

(2) The board may contract with independent contractors to provide services to manage and operate the catastrophic health care cost program, or the board may contract for or appoint agents, employees, professional personnel and any other personnel to manage and operate the catastrophic health care cost program.

(3) The board shall develop rules for the catastrophic health care cost program after consulting with the counties, organizations representing the counties, health care providers, hospitals and organizations representing health care providers and hospitals.

(4) The board shall submit all proposed rules to the legislative council for review prior to adoption, in a manner substantially the same as proposed executive agency rules are reviewed under chapter 52, title 67, Idaho Code. Following adoption, the board shall submit all adopted rules to the legislature for review in a manner substantially the same as adopted executive agency rules are reviewed under chapter 52, title 67, Idaho Code. The legislature, by concurrent resolution, may modify, amend, or repeal any rule of the board.

History.

I.C., § 31-3518, as added by 1982, ch. 190, § 4, p. 511; am. 1983, ch. 215, § 5, p. 594; am. 1991, ch. 233, § 12, p. 553; am. 2009, ch. 177, § 17, p. 558; am. 2010, ch. 273, § 28, p. 691; am. 2011, ch. 291, § 23, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, added subsection (3) and redesignated former subsection (3) as subsection (4).

The 2010 amendment, by ch. 273, throughout the section, substituted "board" for "administrator."

The 2011 amendment, by ch. 291, added "and authorized by this chapter" at the end of the first sentence in subsection (1); rewrote

subsection (2), which formerly read: "The board may contract with an independent contractor to provide services to manage and operate the program, or the board may employ staff to manage and operate the program"; and inserted "hospitals" twice in subsection (3).

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3519. Approval and payment by the board. — (1) Upon receipt of the clerk's statement, a final determination of the county commissioners and the completed application, the board shall approve an application for financial assistance under the catastrophic health care cost program if it determines that:

(a) Necessary medical services have been provided for a medically indigent resident in accordance with this chapter;

(b) The obligated county paid the first eleven thousand dollars ($11,000) of necessary medical services; and

(c) The cost of necessary medical services when paid at the reimbursement rate exceeds the total sum of eleven thousand dollars ($11,000) in the aggregate per resident in any consecutive twelve (12) month period.

(2) Payment to a hospital or provider pursuant to this chapter shall be payment of the debt in full and the hospital or provider shall not seek additional funds from the applicant.

(3) In no event shall the board be obligated to pay a claim, pursuant to this chapter, in excess of an amount based on the application of the appropriate reimbursement rate to those medical services determined to be necessary medical services. The board may use contractors to undertake utilization management review in any part of that analysis.

(4) The board shall, within forty-five (45) days after approval by the board, submit the claim to the state controller for payment. Payment by the state controller shall be made pursuant to section 67-2302, Idaho Code.

History.

I.C., § 31-3519, as added by 1982, ch. 190, § 5, p. 511; am. 1991, ch. 233, § 13, p. 553; am. 1995, ch. 9, § 3, p. 14; am. 1996, ch. 410, § 24, p. 1357; am. 2009, ch. 177, § 18, p. 558; am. 2010, ch. 273, § 29, p. 691; am. 2011, ch. 291, § 24, p. 794.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 177, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 273, rewrote the section, revising the services for which payment is to be made and revising procedures for making certain payments.

The 2011 amendment, by ch. 291, rewrote the section to the extent that detailed comparison is impracticable.

Legislative Intent.

Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

31-3520. Contract for provision of necessary medical services for the medically indigent. — The county commissioners in their respective counties, may contract for the provision of necessary medical services to the medically indigent and may, by ordinance, limit the provision of and

payment for nonemergency necessary medical services to a contract provider. They shall require the contractor to enter into a bond to the county with two (2) or more approved sureties, in such sum as the county commissioners may fix, conditioned for the faithful performance of his duties and obligations as such contractor, and require him to report to the county commissioners quarterly all persons committed to his charge, showing the expense attendant upon their care and maintenance.

History.
I.C., § 31-3520, as added by 1992, ch. 83, § 6, p. 256; am. 1996, ch. 410, § 25, p. 1357; am. 2010, ch. 273, § 30, p. 691; am. 2011, ch. 291, § 25, p. 794.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, in the first sentence, deleted "boards of" preceding "county commissioners," and in the last sentence, twice substituted "county commissioners" for "board."

The 2011 amendment, by ch. 291, deleted "of the county" following "medically indigent" in the first sentence.

31-3521. Employment of physician. — The county commissioners may employ a physician to attend, when necessary, the patients of the county hospital, provided however, that the county commissioners may enter into contracts with groups of licensed physicians for medical attendance upon patients of the county hospital or other persons receiving medical attendance at county expense. They may provide for the employment, at some kind of manual labor, of such of the patients as are capable and able to work and the attending physicians must certify to the person in charge or lessee of the county hospital the names of such of the patients as are incapable of manual labor, and when any such patient becomes capable the physician shall certify that fact.

History.
I.C., § 31-3521, as added by 1992, ch. 83, § 6, p. 256; am. 2010, ch. 273, § 31, p. 691.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 273, substituted "county commissioners" for "board" near the beginning and deleted "board of" preceding the second occurrence of "county commissioners."

31-3551. Advisory panel for prelitigation consideration of indigent resource eligibility claims — Procedure.

JUDICIAL DECISIONS

Properly Presented Case.
Where board of county commissioners denied application for medical indigency benefits on the basis that (1) deceased patient had not completed an interview or cooperated in the application process; (2) there was insufficient information to determine if other resources were available to pay for the requested medical services; and (3) there was insufficient information to determine the patient's medical indigency status; hospital's request for review by medical indigency pre-

litigation screening panel was proper, as resource issues were involved. Mercy Med. Ctr. v. Ada County, 143 Idaho 899, 155 P.3d 700 (2007).

31-3553. Advisory decisions of panel. — The general responsibility of the advisory panel will be to consider the eligibility of applicants on claims referred to them and render written opinions regarding such eligibility of applicants as based upon review of analysis of the resources available to the applicant, as defined in section 31-3502, Idaho Code. Following proceedings on each claim, the advisory panel shall provide the affected parties with its comments and observations with respect to the claim. They shall indicate in such comments whether the applicant appears to have resources available to him or her sufficient to pay for necessary medical services; does not have adequate resources; or any comments or observations which may be relevant and appropriate. The findings of the advisory panel may be used by affected parties in resolving contested claims in a manner consistent with the findings presented. However, such findings will be advisory in nature only and not binding on any of the affected parties.

History.
I.C., § 31-A3504, as added by 1982, ch. 189, § 1, p. 509; am. 2004, ch. 300, § 3, p. 837; am. and redesig. 2005, ch. 25, § 43, p. 82; am. 2009, ch. 177, § 19, p. 558.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 177, updated the section reference in the first sentence.

Legislative Intent.
Section 21 of S.L. 2009, ch. 177 provided: "Legislative Intent. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act."

JUDICIAL DECISIONS

Properly Presented Case.
Where board of county commissioners denied application for medical indigency benefits on the basis that (1) deceased patient had not completed an interview or cooperated in the application process; (2) there was insufficient information to determine if other resources were available to pay for the requested medical services; and (3) there was insufficient information to determine the patient's medical indigency status; hospital's request for review by medical indigency prelitigation screening panel was proper, as resource issues were involved. Mercy Med. Ctr. v. Ada County, 143 Idaho 899, 155 P.3d 700 (2007).

31-3554. Tolling of limitation periods during pendency of proceedings.

JUDICIAL DECISIONS

Timely Petition.
Hospital had twenty-eight days within which to file its petition for judicial review, and fourteen of those days ran before it requested prelitigation screening; once the thirty-day period following the medical indigency pre-litigation screening panel decision had run, the hospital still had fourteen days remaining within which to file a petition for judicial review, and it filed the petition before the expiration of that time period. Mercy Med. Ctr. v. Ada County, 143 Idaho 899, 155 P.3d 700 (2007).

31-3558. Nondisclosure of personal identifying information. — Personal identifying information about a particular utilization management reviewer or practitioner engaged by the department or the board shall not be disclosed without the prior written authorization of the reviewer or practitioner. Notwithstanding this nondisclosure of personal identifying information, redacted copies of all reports and recommendations of the department's or the board's utilization management reviewers or practitioners shall be maintained in the official record of the respective county commissioners and the board as described in chapter 52, title 67, Idaho Code, and chapter 15, title 31, Idaho Code.

History.
I.C., § 31-3558, as added by 2011, ch. 291, § 26, p. 794.

CHAPTER 39

AMBULANCE SERVICE

31-3908. Ambulance district authorized. — (1) The county commissioners of any county shall, upon petition signed by not less than fifty (50) qualified electors of said county, or any portion thereof, which may exclude incorporated cities, undertake the following procedure to determine the advisability of resolving to establish and maintain an ambulance service district within the county as may be designated in the petition.

(a) A petition to form an ambulance service district shall be presented to the county clerk and recorder. The petition shall be signed by not less than fifty (50) of the resident real property holders within the proposed district. The petition shall designate the boundaries of the district.

(b) The petition shall be filed with the county clerk and recorder of the county in which the signers of the petition are located. Upon the filing of the petition the county clerk shall examine the petition and certify whether the required number of petitioners have signed the petition. If the number of petition signers is sufficient, the clerk shall transmit the petition to the board of county commissioners.

(c) Upon receipt of a duly certified petition the board of county commissioners shall cause the text of the petition to be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation within the county. With the publication of the petition there shall be published a notice of the time of the meeting of the board of county commissioners when the petition will be considered stating that all persons interested may appear and be heard. No more than five (5) names attached to the petition shall appear in the publication and notice, but the number of signatures shall be stated.

At the time of filing the petition the sponsors thereof shall cause to be deposited with the county clerk a sufficient sum of money to cover the cost of publication of the petition and all necessary notices. If the petition and

notices are not published the deposit shall be returned to whomever deposited the funds, and if there is any surplus remaining after paying for the publication as herein provided it shall be returned to the original depositors, and if a district is created the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

(d) At the time set for hearing the petition, the board of county commissioners shall hear all persons who desire to be heard relative to the creation of an ambulance service district. The board of county commissioners may, if they so desire and it appears desirable, adjourn the meeting for not to exceed thirty (30) days in time to further hear the petitioners and protestants, if any. After the hearing or hearings, the board of county commissioners shall adopt a resolution either creating the proposed ambulance service district or denying the petition. When the board of county commissioners creates an ambulance service district the board shall adopt a resolution describing the boundaries of the district.

(e) When the board of county commissioners adopts the resolution creating the ambulance service district, the board shall include in the resolution the name of the district, and file a copy of the order creating the district with the county clerk and recorder, for which the clerk shall receive a fee of three dollars ($3.00).

(f) Procedures for annexation, deannexation, or dissolution of a district created pursuant to this section shall be in substantial compliance with the provisions for public notice and hearing provided herein, and shall be by resolution adopted by the board of county commissioners.

(2) When the board of county commissioners has ordered the creation of an ambulance service district, pursuant to the provisions of this section, such district is hereby recognized as a legal taxing district, and providing ambulance service is a governmental function.

(3) The board of county commissioners shall be the governing board of an ambulance service district created pursuant to this section, and shall exercise the duties and responsibilities provided in chapter 39, title 31, Idaho Code.

(4) In any county where an ambulance service district is created as provided herein, the board of county commissioners is authorized to levy a special tax, not to exceed four-hundredths percent (.04%) of market value for assessment purposes, except as authorized by paragraph (a) of this subsection, upon all taxable property within the district for the purposes of the district, but the levy otherwise authorized in section 31-3901, Idaho Code, shall not be made on taxable property within the district.

(a) In any county where an ambulance service district:

(i) Was created as of January 1, 1976,

(ii) Had at the time of its creation a market value for assessment purposes of the district of less than three hundred million dollars ($300,000,000), and

(iii) The service provided by the district is an advanced life support paramedic unit,

the board of county commissioners may submit to the electors within the district the question of whether the levy authorized in subsection (4) of

this section may be increased to a levy not to exceed six-hundredths percent (.06%) of market value for assessment purposes upon all taxable property within the district for the purposes of the district, if approved by a minimum of two-thirds (2/3) of the qualified electors of the district voting at an election called for that purpose and held on the May or November dates provided in section 34-106, Idaho Code, but the levy otherwise authorized in section 31-3901, Idaho Code, shall not be made on taxable property within the district.

(5) The board of county commissioners is authorized by resolution to create an ambulance district capital improvement account. The board may dedicate all or a portion of the fees and taxes collected pursuant to this chapter to the capital improvement account for the purpose of purchasing necessary buildings, land or equipment for the operation of the district. The board is further authorized to carry over and add to the funds in the account from year to year in order to make the purchases authorized by this subsection.

History.

I.C., § 31-3908, as added by 1975, ch. 258, § 1, p. 703; am. 1976, ch. 289, § 2, p. 996; am. 1980, ch. 350, § 9, p. 887; am. 1981, ch. 288, § 1, p. 593; am. 1994, ch. 34, § 1, p. 51; am. 1994, ch. 52, § 1, p. 90; am. 2010, ch. 208, § 1, p. 449.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 208, in the introductory paragraph in subsection (4), substituted "paragraph (a) of this subsection" for "subsection (a) below"; subdivided paragraph (4)(a), adding the paragraph (4)(a)(i) and (4)(a)(ii) designations and paragraph (4)(a)(iii); in paragraph (4)(a)(ii), inserted "time of its creation"; and in the last paragraph in paragraph (4)(a), substituted "the board of county commissioners may submit to the electors within the district the question of whether the levy authorized in subsection (4) of this section may be increased to a levy not to exceed six-hundredths percent (.06%)" for "the board of county commissioners is authorized to levy a special tax not to exceed ten-hundredths percent (.10%)," and inserted the language beginning "if approved by a minimum" and ending "section 34-106, Idaho Code."

Effective Dates.

Section 2 of S.L. 2010, ch. 208 declared an emergency. Approved March 31, 2010.

31-3908A. Exemptions from taxation. — The board of county commissioners, upon application, may, by an ordinance enacted by not later than the second Monday of July, exempt all or a portion of the unimproved real property within the district from taxation, and may exempt all or a portion of the taxable personal property within the district from taxation. Any ordinance of the board of county commissioners granting an exemption from taxation under the provisions of this section must provide that each category of property is treated uniformly. Notice of intent to adopt an ordinance which exempts unimproved real property shall be provided to property owners of record in substantially the same manner as required in section 67-6511(2)(b), Idaho Code, as if the ordinance were making a zoning district boundary change.

History.
I.C., § 31-3908A, as added by 1996, ch. 152, § 1, p. 491; am. 2013, ch. 216, § 5, p. 507.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 216, updated the statutory reference in the last sentence in light of the 2013 amendment of § 67-6511.

CHAPTER 42

COUNTY HOUSING AUTHORITIES AND COOPERATION LAW

SECTION.

31-4202. Declaration of governmental function.

OPINIONS OF ATTORNEY GENERAL

IHFA.
The Idaho housing and finance association (IHFA) is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city- or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

31-4203. Definitions.

OPINIONS OF ATTORNEY GENERAL

IHFA.
The Idaho housing and finance association (IHFA) is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city- or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

31-4204. Powers of authority.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Compliance with county housing law.

Applicability.
Because only a portion of a community housing planned unit development was going to be low-income housing units, the remainder of the development did not need to be considered when determining compliance with the county housing authorities and cooperation law. Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009).

Compliance with County Housing Law.
A county housing authority's powers are not limited to developing a housing project. There is nothing in the community housing law providing that a housing project cannot be a portion of a larger development, nor does the law provide that if a county housing authority is involved in a housing project that is a portion of a larger development, the county housing law must apply to the entire development. Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009).

31-4219. Submission of bond issue to attorney general — Certification of validity. [Repealed.]

Repealed by S.L. 2014, ch. 251, § 1, effective July 1, 2014.

History.
1970, ch. 211, § 19, p. 584.

CHAPTER 43

RECREATION DISTRICTS

31-4306. Election of directors. — (1) An election of directors shall be held in each district on the Tuesday succeeding the first Monday of November of each odd-numbered year. Such election shall be held in conformity with title 34, Idaho Code. Before the notice of election is given, the board shall divide the district into subdivisions as nearly equal in population as possible to be designated as director's subdistrict 1, 2 and 3, or director's subdistrict 1, 2, 3, 4 and 5, depending upon the number of subdistricts in the district. Each nominating petition shall state the subdistrict for which the nominee is nominated.

(2) In any election for directors if, after the expiration of the date for filing written nominations for the office of director, it appears that only one (1) qualified candidate has been nominated for each position to be filled and if no declaration of intent has been filed as provided in subsection (3) of this section, it shall not be necessary to hold an election, and the board of directors shall, no later than seven (7) days before the scheduled date of the election, declare such candidate elected as director, and the secretary of the recreation district board shall immediately make and deliver to such person a certificate of election.

(3) No write-in vote for recreation district director shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of recreation district director if elected. The declaration of intent shall be filed with the recreation district board secretary not later than forty-five (45) days before the day of election.

History.
1970, ch. 212, § 6, p. 599; am. 1971, ch. 32, § 1, p. 76; am. 1982, ch. 254, § 7, p. 646; am. 1983, ch. 114, § 2, p. 245; am. 1994, ch. 328, § 1, p. 1058; am. 2000, ch. 4, § 1, p. 5; am. 2009, ch. 341, § 19, p. 993; am. 2014, ch. 162, § 1, p. 455.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in subsection (1), substituted "odd-numbered year" for "even-numbered year" in the first sentence

and deleted "chapter 14, title 34, Idaho Code, and other applicable provisions of" following "conformity with" in the second sentence.

The 2014 amendment, by ch. 162, substituted "forty-five (45) days" for "twenty-five (25) days" in the last sentence of subsection (3).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-4323. Creation of indebtedness for works or improvements — Election on proposed indebtedness. — Whenever the board of a recreation district shall, by resolution, determine that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, completion or maintenance of any purpose stated in section 31-4316, Idaho Code, equipment or apparatus to carry out the objects or purposes of said district requiring the creation of an indebtedness exceeding the income and revenue provided for the year, the board shall order the submission of the proposition of issuing such obligations or bonds or creating other indebtedness to the qualified electors, at an election held, subject to the provisions of section 34-106, Idaho Code, for that purpose. The declaration of public interest or necessity, herein required, and the provision for the holding of such election, may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolutions shall also fix the date upon which such election shall be held, and the manner of holding the same, which shall be in accordance with the provisions of title 34, Idaho Code, and the method of voting for or against the incurring of the proposed indebtedness. The county commissioners, pursuant to section 34-302, Idaho Code, shall designate the polling place or places and the county clerk shall appoint for each polling place, from the qualified electors, the judges of such election, provided, however, that no district shall issue or have outstanding its coupon bonds in excess of two percent (2%) of market value for assessment purposes of the real estate and personal property within the said district or in excess of ten percent (10%) of market value for assessment purposes of real estate and personal property within a district created pursuant to section 31-4304A, Idaho Code, according to the assessment of the year preceding any such issuance of such evidence of indebtedness for any or all of the propositions specified in this election.

History.

I.C., § 31-4323, as added by 1971, ch. 71, § 2, p. 161; am. 1980, ch. 350, § 11, p. 887; am. 1995, ch. 118, § 43, p. 417; am. 1995, ch. 353, § 7, p. 1193; am. 2009, ch. 341, § 20, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, corrected the section reference in the first sentence and subdivided and rewrote the former last sentence to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

31-4325. Conduct of election for proposed indebtedness. — The county clerk shall conduct the election in a manner prescribed by law for the holding of general elections and shall take their returns to the secretary of the district at any regular or special meeting of the board held within five (5) days following the date of such election. The returns thereof shall be canvassed and the results thereof shall be declared.

History.
I.C., § 31-4325, as added by 1971, ch. 71, § 4, p. 161; am. 2009, ch. 341, § 21, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, substituted "county clerk" for "election board or boards."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 45

POLLUTION CONTROL FINANCING

SECTION.

31-4510. Powers not restricted — Law complete in itself — Election. — Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which any county might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice or approval shall be required for the issuance of any revenue bonds or any instrument as security therefor, except that no revenue bonds shall be issued hereunder until the board shall by resolution adopted by a majority of the board determine that the interest of the county and the public interest or necessity demand the acquisition, construction, installation and equipment of pollution control facilities to be financed for or to be sold, leased or otherwise disposed of to persons, associations or corporations other than municipal corporations or other political subdivisions, whereupon the board shall order the submission of the proposition of issuing such revenue bonds for the purposes set forth in said resolution to the vote of the qualified electors of the county as defined in section 34-104, Idaho Code, at an election to be held subject to the provisions of section 34-106, Idaho Code. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the revenue bonds are proposed to be issued, the amount of principal of the revenue bonds, and the source of revenues pledged to the payment of said bonds.

Such resolution shall also fix the date upon which such election shall be held, subject to the provisions of section 34-106, Idaho Code, the manner of holding the same, which shall be in accordance with the provisions of title 34, Idaho Code, and the method of voting for or against the issuance of the revenue bonds. Such resolution shall designate the precincts and polling places. The county clerk shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the board, or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the board may be consolidated for elections held hereunder. A notice of election shall be published by the county clerk once a week for two (2) consecutive weeks, the first publication shall be not less than twelve (12) days prior to the election, and the last publication of which shall be at least five (5) days prior to the date set for said election, in the newspaper of general circulation within the county in which legal notices of the county are customarily published, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

The county clerk shall conduct the election in the manner prescribed by law for the holding of county elections to the extent the same shall apply. The returns thereof shall be canvassed and the results thereof declared as provided in chapter 12, title 34, Idaho Code.

In the event that it shall appear from said returns that a majority of the qualified electors of the county who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the county shall thereupon be authorized to issue and sell such revenue bonds of the county, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided.

History.
1975, ch. 52, § 10, p. 105; am. 1978, ch. 265, § 2, p. 590; am. 1995, ch. 118, § 45, p. 417; am. 2009, ch. 341, § 22, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, rewrote the second and third paragraph to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 47
MUSEUM BOARDS

SECTION.

31-4701. Creation of county museum board. — A county museum board may be created as follows:

(1) In addition to the procedures provided in subsections (2), (3) and (4) of this section, the county commissioners may adopt a resolution and incorporate in its minutes to signify that it is the intention of the board of county commissioners to create a county museum board in accordance with the provisions of this chapter. The board of county commissioners shall fix a date, not less than three (3) nor more than six (6) weeks from the date of the adoption of the resolution for a public hearing, and shall order the clerk of the board to publish notice of the hearing in one (1) or more newspapers of general circulation in the county, which notice shall include the time and place of the hearing at which the board of county commissioners will hear any person or persons interested upon the matter of whether a county museum board shall be created pursuant to this chapter. If after the hearing provided for in this section, the board of county commissioners shall then deem it for the best interests of the county that a county museum board be created, the county commissioners shall enter an order to that effect and calling an election upon the formation of the proposed county museum board as provided in this section.

(2) Any person or persons may file a petition for the formation of a county museum board with the clerk. The petition which may be in one (1) or more papers shall be signed by not less than ten percent (10%) of the registered voters residing within the county.

(3) The clerk shall, within ten (10) days after the filing of the petition, estimate the cost of advertising and holding the election provided in this section and notify in writing the person or any of the persons filing the petition as to the amount of the estimate. The person or persons shall within twenty (20) days after receipt of the written notice deposit the estimated amount with the clerk in cash, or the petition shall be deemed withdrawn. If the deposit is made and the county museum board is formed, the person or persons so depositing the sum shall be reimbursed from the first moneys collected by the county museum board from the taxes authorized to be levied by this chapter.

(4) Within thirty (30) days after the filing of the petition together with the map and the making of the cash deposit, the county commissioners shall determine whether or not they substantially comply with the requirements of this section. If the county commissioners find that there has not been substantial compliance with the requirements, the county commissioners shall enter an order to the effect specifying the particular deficiencies, dismissing the petition and refunding the cash deposit. If the county commissioners find that there has been substantial compliance with the requirements, the county commissioners shall forthwith enter an order to that effect and calling an election upon the formation of the proposed county museum board as provided in this section.

(5) If the county commissioners order an election as provided in this section, the election shall be conducted on the first Tuesday succeeding the first Monday of November in any year, and in accordance with the general election laws of the state. The county commissioners shall establish election precincts, and the county clerk shall design and print voter's oaths, ballots and other necessary supplies, appoint election personnel and provide for the

conduct and tally of the election. Each registered voter of the county shall be entitled to vote in the election in accordance with the provisions of title 34, Idaho Code. The county clerk shall give notice of the election which notice shall clearly state the question of whether a county museum board shall be formed and shall state the date of the election. The notice shall be published as provided in chapter 14, title 34, Idaho Code, in a newspaper published within the county.

(6) Immediately after the election, the judges at the election shall forward the ballots and results of the election to the county clerk. The county commissioners shall canvass the vote within ten (10) days after the election. If forty-five percent (45%) or more of the votes cast at the election are against the formation of the county museum board, the county commissioners shall enter an order so finding and declaring that the county museum board shall not be formed. If more than fifty-five percent (55%) of the votes cast at the election are in favor of forming the county museum board, the county commissioners shall enter an order so finding, declaring the county museum board duly organized. The county commissioners shall cause one (1) certified copy of the order to be filed in the office of the county recorder of the county and shall cause one (1) certified copy of the order to be transmitted to the governor. Immediately upon the entry of the order, the organization of the county museum board shall be complete.

(7) After the election, the validity of the proceedings hereunder shall not be affected by any defect in the petition, if any, or in the number or qualification of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the organization of the county museum board after six (6) months have expired from the date of entering the order declaring the formation of the county museum board.

History.

I.C., § 31-4701, as added by 1990, ch. 393, § 1, p. 1101; am. 1991, ch. 322, § 1, p. 837; am. 2009, ch. 341, § 23, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (3), substituted "chapter" for "act"; in subsection (5), in the first sentence, deleted "except as hereinafter provided" from the end, in the second sentence, inserted "and the county clerk" and deleted "by rule and regulation" preceding "provide for," in the third sentence, added the title reference, in the fourth sentence, inserted the first occurrence of "county," and, in the last sentence, substituted "published as provided in chapter 14, title 34, Idaho Code" for "published once each week for three (3) successive publications prior to the election"; and, in the first sentence in subsection (6), inserted "county."

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 48

EMERGENCY COMMUNICATIONS ACT

31-4801. Purpose. — The legislature recognizes that providing consolidated emergency communications systems is vital in enhancing the public health, safety, and welfare of the residents of the state of Idaho. The legislature further finds that there is an obvious need for providing a means to finance the initiation, maintenance, operation, enhancement and governance of consolidated emergency communications systems.

(1) The legislature of the state of Idaho finds that:

(a) Since the original enactment of the emergency communications act in 1988, many of Idaho's communities have found that they are lacking in the resources to fully fund emergency communications systems at the local level;

(b) Changes in technology and the rapid growth of communications media have demonstrated that financing such systems solely by a line charge on subscribers to wireline services does not reflect utilization of emergency communications systems by subscribers to wireless and other forms of communications systems;

(c) There is a need to enhance funding for the initiation and enhancement of consolidated emergency communications systems throughout the state;

(d) Utilization of cellular telephones and voice over internet protocol (VoIP) communications to access emergency communications systems has substantially increased citizen access to emergency services while at the same time increasing demands upon the emergency response system;

(e) In order to protect and promote the public health and safety, and to keep pace with advances in telecommunications technology and the various choices of telecommunications technology available to the public, there is a need to plan and develop a statewide coordinated policy and program to ensure that enhanced 911 services are available to all citizens of the state and in all areas of the state.

(2) Therefore, it is hereby declared that the intent and purpose of the provisions of this act are to:

(a) Provide authority to counties and 911 service areas to impose an emergency communications fee on the use of telephone lines, wireless, VoIP or other communications services that connect an individual dialing 911 to an established public safety answering point;

(b) Provide that the emergency communications fee shall be exclusively utilized by the counties or 911 service areas electing to impose it to finance the initiation, maintenance, operation, enhancement and governance of

consolidated emergency systems as well as enhanced consolidated emergency systems;

(c) Provide for the agreed-to reimbursement to telecommunications providers for their implementation of enhanced consolidated emergency communications systems by counties or 911 service areas that have implemented enhanced consolidated emergency communications systems.

History.

I.C., § 31-4801, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 1, p. 449; am. 2003, ch. 290, § 1, p. 784; am. 2003, ch. 311, § 1, p. 852; am. 2004, ch. 325, § 1, p. 973; am. 2007, ch. 340, § 1, p. 995.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 340, in subsection (1)(d), inserted "and voice over internet protocol (VoIP) communications"; and in subsection (2)(a), substituted "use of telephone lines, wireless, VoIP or other communications services that connect an individual dialing 911 to an established public safety answering point" for "use of both telephone lines and wireless communications systems."

31-4802. Definitions. — As used in this chapter:

(1) "Access line" means any telephone line, trunk line, network access register, dedicated radio signal, or equivalent that provides switched telecommunications access to a consolidated emergency communications system from either a service address or a place of primary use within this state. In the case of wireless technology, each active dedicated telephone number shall be considered a single access line.

(2) "Administrator" means the person, officer or agency designated to operate a consolidated emergency communications system, and to receive funds for such an operation.

(3) "Basic consolidated emergency system" means consolidated emergency systems that are not enhanced.

(4) "Consolidated emergency communications system" means facilities, equipment and dispatching services directly related to establishing, maintaining, or enhancing a 911 emergency communications service.

(5) "Emergency communications fee" means the fee provided for in section 31-4803, Idaho Code.

(6) "Enhanced consolidated emergency system" means consolidated emergency systems that provide enhanced wireless 911 service and include, but are not limited to, the technological capability to provide call back numbers, cell site locations, and the location of calls by latitude and longitude and made through the systems of wireless carriers.

(7) "Governing board" means the joint powers board, if the 911 service area is a multicounty area, or the board of county commissioners of the county or the city council if the 911 service area is a city, or both the board of county commissioners and the city council if the 911 service area includes both city and county residents but not the entire county.

(8) "Interconnected" means the ability of the user to receive calls from and terminate calls to the public switched telephone network (PSTN), including commercial mobile radio service (CMRS) networks.

(9) "Interconnected VoIP service" means a service bearing the following characteristics:

(a) The service enables real-time, two-way voice communications;

(b) The service requires a broadband connection from the user's location;

(c) The service requires IP-compatible customer premises equipment; and

(d) The service permits users to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls on the PSTN.

(10) "Interconnected VoIP service line" means an interconnected VoIP service that offers an active telephone number, or successor dialing protocol assigned by a VoIP provider to a VoIP service customer number that has an outbound calling capability of directly accessing a public safety answering point.

(11) "911 service area" means a regional, multicounty, county or area other than a whole county in which area the residents have voted to establish a consolidated emergency communications system.

(12) "Place of primary use" means the residential street address or the primary business street address in Idaho where the customer's use of the wireless or VoIP service primarily occurs. For the purposes of 911 fees imposed upon interconnected VoIP service lines, the place of primary use shall be the customer's registered location on the date the customer is billed.

(13) "Telecommunications provider" means any person providing:

(a) Exchange telephone service to a service address within this state; or

(b) Any wireless carrier providing telecommunications service to any customer having a place of primary use within this state; or

(c) Interconnected VoIP service to any customer having a place of primary use within this state; or

(d) A provider of any other communications service that connects an individual having either a service address or a place of primary use within this state to an established public safety answering point by dialing 911.

(14) "VoIP service provider" means any person providing interconnected voice over internet protocol (VoIP) service.

(15) "Wireless carrier" means a cellular licensee, a personal communications service licensee, and certain specialized mobile radio providers designated as covered carriers by the federal communications commission in 47 CFR 20.18 and any successor to such rule.

History.

I.C., § 31-4802, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 2, p. 449; am. 1994, ch. 86, § 1, p. 202; am. 2003, ch. 290, § 2, p. 784; am. 2007, ch. 340, § 2, p. 995.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 340, added subsections (8) through (10) and redesignated subsections accordingly; in subsection (12), inserted "or VoIP" and added the last sentence; added subsections (13)(c) and (13)(d) and made related redesignations; and added subsection (14).

31-4804. Emergency communications fee. — (1) The emergency communications fee provided pursuant to the provisions of this chapter shall be a uniform amount not to exceed one dollar ($1.00) per month per access or interconnected VoIP service line, and such fee shall be used

exclusively to finance the initiation, maintenance, operation, enhancement and governance of a consolidated emergency communications system and provide for the reimbursement of telecommunications providers for implementing enhanced consolidated emergency systems as provided for in section 31-4804A, Idaho Code. All emergency communications fees collected and expended pursuant to this section shall be audited by an independent, third party auditor ordinarily retained by the governing board for auditing purposes. The purpose of the audit as related to emergency communications systems is to verify the accuracy and completeness of fees collected and costs expended.

(2) The fee shall be imposed upon and collected from purchasers of access lines or interconnected VoIP service lines with a service address or place of primary use within the county or 911 service area on a monthly basis by all telecommunications providers of such services. The fee may be listed as a separate item on customers' monthly bills.

(3) The telecommunications providers shall remit such fee to the county treasurer's office or the administrator for the 911 service area based upon the 911 service area from which the fees were collected. In the event the telecommunications provider remits such fees based upon the emergency communications fee billed to the customer, a deduction shall be allowed for uncollected amounts when such amounts are treated as bad debt for financial reporting purposes.

(4) From every remittance to the governing body made on or before the date when the same becomes due, the telecommunications provider required to remit the same shall be entitled to deduct and retain one percent (1%) of the collected amount as the cost of administration for collecting the charge. Telecommunications providers will be allowed to list the surcharge as a separate item on the telephone subscriber's bill, and shall have no obligation to take any legal action to enforce the collection of any charge, nor be held liable for such uncollected amounts.

(5) Use of fees. The emergency communications fee provided hereunder shall be used only to pay for the lease, purchase or maintenance of emergency communications equipment for basic and enhanced consolidated emergency systems, including necessary computer hardware, software, database provisioning, training, salaries directly related to such systems, costs of establishing such systems, management, maintenance and operation of hardware and software applications and agreed-to reimbursement costs of telecommunications providers related to the operation of such systems. All other expenditures necessary to operate such systems and other normal and necessary safety or law enforcement functions including, but not limited to, those expenditures related to overhead, staffing, dispatching, administrative and other day to day operational expenditures, shall continue to be paid through the general funding of the respective governing boards; provided however, that any governing body using the emergency communication fee to pay the salaries of dispatchers as of March 1, 2006, may continue to do so until the beginning of such governing body's 2007 fiscal year.

History.
I.C., § 31-4804, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 4, p. 449; am. 2003, ch. 290, § 4, p. 784; am. 2003, ch. 311, § 2, p. 852; am. 2006, ch. 238, § 1, p. 722; am. 2007, ch. 340, § 3, p. 995.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 340, in subsection (1), inserted "or interconnected VoIP service"; and rewrote subsection (2), which formerly read: "The fee shall be collected from customers on a monthly basis by all telecommunications providers that make available access lines to persons within the county, or 911 service area, and may be listed as a separate item on customer's monthly bills."

31-4809. Fund and appropriations. — The county treasurer of each county or the administrator for a 911 service area in which an emergency communications system has been established pursuant to this chapter shall establish a fund to be designated the emergency communications fund in which all fees collected pursuant to this chapter, including fees distributed pursuant to section 31-4818(6), Idaho Code, shall be deposited and such fund shall be used exclusively for the purposes of this chapter. The moneys collected and the interest earned in this fund shall be appropriated by the county commissioners, or governing board, for expenses incurred by the emergency communications system as set forth in an annual budget prepared by the joint powers board, or in their absence, the county commissioners and incorporated into the annual county budget.

History.
I.C., § 31-4809, as added by 1988, ch. 348, § 1, p. 1027; am. 1990, ch. 200, § 7, p. 449; am. 2013, ch. 224, § 1, p. 525.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 224, inserted "including fees distributed pursuant to section 31-4818(6), Idaho Code" in the first sentence.

Effective Dates.
Section 4 of S.L. 2013, ch. 224 provided that the act should take effect on and after January 1, 2014.

31-4813. Prepaid wireless telecommunications service emergency communications fee. — (1) As used in this section:

(a) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(b) "Prepaid wireless E911 fee" means the fee imposed by subsection (2)(a) of this section on prepaid wireless telecommunications service that is required to be collected by a seller from a consumer;

(c) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars;

(d) "Provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the federal communications commission;

(e) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;

(f) "Seller" means a person who sells prepaid wireless telecommunications service to another person;

(g) "Tax commission" means the Idaho state tax commission.

(2)(a) There is hereby imposed a prepaid wireless E911 fee in the amount of two and one-half percent (2.5%) of the sales price on each retail transaction.

(b) The prepaid wireless E911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless E911 fee shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(c) For purposes of paragraph (b) of this subsection, a retail transaction is considered to have occurred in Idaho if:

(i) The retail transaction is effected in person by the customer at a seller's location in Idaho;

(ii) When subparagraph (i) of this paragraph does not apply, the prepaid wireless telecommunications service is delivered to the subscriber at an Idaho address provided to the retailer;

(iii) When subparagraphs (i) and (ii) of this paragraph do not apply, the retailer's records that are maintained in the ordinary course of business indicate that the subscriber's address is in Idaho and the records are not made or kept in bad faith;

(iv) When subparagraphs (i) through (iii) of this paragraph do not apply, the subscriber gives an Idaho address during the consummation of the sale, including the subscriber's payment instrument if no other address is available, and the address is not given in bad faith;

(v) When subparagraphs (i) through (iv) of this paragraph do not apply, the subscriber's mobile telephone number is associated with an Idaho location.

(d) The prepaid wireless E911 fee is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless E911 fees that the seller collects or is required to collect from consumers as provided pursuant to the provisions of this section, including all such fees that the seller is deemed to collect where the amount of the fee has not been separately stated on an invoice, receipt or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless E911 fee that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

(f) The prepaid wireless E911 fee shall be proportionately increased or reduced, as applicable, upon any change to the fees imposed pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code. The amount of the prepaid wireless E911 fee shall be the percentage calculated by adding the amounts authorized pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code, and then dividing such sum by fifty

dollars ($50.00). Such increase or reduction shall be effective on the effective date of the change to the fees imposed pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code, or if later, the first day of the first calendar month to occur at least sixty (60) days after the enactment of the change to fees imposed pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code. The tax commission shall provide not less than thirty (30) days of advance notice of such increase or reduction on its website.

(g) When prepaid wireless telecommunications service is sold with one (1) or more other products or services for a single, nonitemized price, then the percentage specified in paragraph (a) of this subsection shall apply to the entire nonitemized price unless the seller elects to apply such percentage to:

(i) If the amount of the prepaid wireless telecommunications service is disclosed to the consumer as a dollar amount, such dollar amount; or

(ii) If the seller can identify the portion of the price that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes including, but not limited to, non-tax purposes, such portion. Provided however, if a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the percentage specified in paragraph (a) of this subsection to such transaction. For purposes of this subparagraph, an amount of service denominated as ten (10) minutes or less, or five dollars ($5.00) or less, is minimal.

(3)(a) Prepaid wireless E911 fees collected by sellers shall be remitted to the tax commission at the times and in the manner provided by chapter 36, title 63, Idaho Code, with respect to the sales tax. The tax commission shall establish registration, reporting and payment procedures that substantially coincide with the registration and payment procedures that apply to the sales tax pursuant to the provisions of chapter 36, title 63, Idaho Code.

(b) A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911 fees that are collected by the seller from consumers.

(c) The following provisions of chapter 36, title 63, Idaho Code, with respect to sales tax shall apply to the prepaid wireless E911 fee:

(i) Audit and appeal procedures;

(ii) Collection, enforcement, penalties and interest; and

(iii) Statute of limitations and refunds of fees paid erroneously.

The tax commission shall have the authority to promulgate administrative rules applicable to the prepaid wireless E911 fee. Such rules shall, to the extent practicable, minimize administrative burdens on sellers by incorporating existing provisions of chapter 36, title 63, Idaho Code, that apply to audits, appeals, collection, enforcement, penalties, interest, statute of limitations and refunds of fees paid erroneously.

(d) The tax commission shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is

not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to the provisions of chapter 36, title 63, Idaho Code, with respect to the sales tax.

(e) The tax commission shall distribute revenue from the prepaid wireless E911 fees as follows:

(i) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the tax commission shall be paid through the state refund account; and

(ii) Pay all remaining remitted prepaid wireless E911 fees over to the Idaho emergency communications fund provided for in section 31-4818(1), Idaho Code, within thirty (30) days of receipt.

The tax commission may deduct an amount, not to exceed two percent (2%) of remitted fees, to reimburse its actual costs of administering the collection and remittance of prepaid wireless E911 fees. The tax commission may also retain an amount, not to exceed seventy thousand dollars ($70,000), of remitted revenues in the fiscal year 2014 only for programming and one-time implementation costs.

(4) Each provider and seller of prepaid wireless telecommunications service is covered by the liability provisions of section 31-4812, Idaho Code.

(5) The prepaid wireless E911 fee imposed pursuant to this section shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state or any intergovernmental agency, for E911 funding purposes, upon any provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless telecommunications service.

History.

I.C., § 31-4813, as added by 2003, ch. 290, § 9, p. 784; am. 2007, ch. 340, § 4, p. 995; am. 2013, ch. 224, § 2, p. 525.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 340, added the last sentence.

The 2013 amendment, by ch. 224, rewrote the section heading and text, which formerly read: "**Prepaid calling cards.** The imposition of the emergency communications fee shall not apply to the prepaid calling cards for all forms of access fees. Prepaid wireline, wireless and VoIP phones with a service address or place of primary use within Idaho are not considered prepaid calling cards."

Effective Dates.

Section 4 of S.L. 2013, ch. 224 provided that the act should take effect on and after January 1, 2014.

31-4815. Creation of Idaho emergency communications commission — Terms. — (1) There is hereby created in the military division an Idaho emergency communications commission (hereinafter referred to as "the commission") for the purpose of assisting cities, counties, ambulance districts and fire districts in the establishment, management, operations and accountability of consolidated emergency communications systems. Notwithstanding any other provision of law to the contrary, the commission

shall, upon being constituted, exercise its powers and duties in accordance with the provisions of this section relative to consolidated emergency communications in this state established by enactment of the legislature or by private act.

(2) The commission shall be composed of thirteen (13) voting members, with eleven (11) appointed by the governor as follows: one (1) member representing the association of Idaho cities, one (1) member representing the Idaho association of counties, one (1) member representing the Idaho sheriffs' association, one (1) member representing the Idaho chiefs of police association, one (1) member representing the Idaho fire chiefs association, one (1) member representing the Idaho prosecuting attorneys association, one (1) member representing the Idaho state emergency medical services communications center, one (1) member representing the Idaho emergency medical services association, one (1) member representing the public at large and two (2) members representing private industry service providers, one (1) from the wireless industry and one (1) from the traditional phone service industry. The commission shall also include the director of the Idaho state police or a designated representative and the adjutant general or a designated representative. One (1) representative of the attorney general shall serve as a nonvoting ex officio member.

(3) Except as provided in this subsection, members of the commission shall be appointed for a term of four (4) years. The following five (5) members shall be appointed to an initial term of two (2) years: the member representing the Idaho fire chiefs association, the member representing the Idaho state emergency medical services communications center, the member representing the Idaho emergency medical services association, the member representing the wireless industry, and one (1) member representing the public. The remaining six (6) members appointed by the governor shall be appointed for an initial term of four (4) years. Thereafter, all terms shall be for a period of four (4) years.

(4) The commission shall elect a chair and such officers as it may deem necessary and appropriate. The commission shall meet at least annually and at the call of the chair. Members of the commission shall be compensated as provided in section 59-509(b), Idaho Code. Compensation shall be paid from the emergency communications fund created in section 31-4818, Idaho Code.

History.

I.C., § 31-4815, as added by 2004, ch. 325, § 2, p. 973; am. 2007, ch. 292, § 1, p. 828.

STATUTORY NOTES

Cross References.

Military division as part of governor's office, § 67-802.

Amendments.

The 2007 amendment, by ch. 292, substituted "military division" for "department of administration" in the first sentence in subsection (1).

31-4818. Idaho emergency communications fund — Establishment and administration. — (1) There is hereby created within the treasury of the state of Idaho a separate fund known as the Idaho emergency communications fund, which shall consist of moneys received from counties, cities, consolidated emergency communications operations, the fee imposed pursuant to the provisions of section 31-4813, Idaho Code, grants, donations, gifts and revenues from any other source to support the delivery of consolidated emergency communications systems.

(2) Moneys in the fund are hereby continuously appropriated and shall be utilized exclusively for the purposes set forth in this chapter as determined by the commission.

(3) Annually, at the direction of the commission, not more than one percent (1%) of the total emergency communications fees collected in the state of Idaho is hereby dedicated for and shall be placed in the fund on a quarterly basis by county, city or consolidated emergency communications systems. The commission, on an annual basis, shall prepare a budget indicating that portion of the fee necessary for the continuous operation of the commission to achieve the purposes of this chapter.

(4) The commission shall authorize disbursement of moneys in the fund to eligible entities.

(5) The state treasurer shall invest idle moneys in the fund and interest earned from such investments shall be returned to the fund.

(6) Funds received from the fee imposed pursuant to the provisions of section 31-4813, Idaho Code, shall be distributed quarterly to each governing board based upon population served, excluding one percent (1%) to be used for administration of the emergency communications commission as described in this section.

(7) This act is necessary for the immediate preservation of the public peace, health, safety or support of the state government and its existing public institutions and takes effect January 1, 2014.

History.
I.C., § 31-4818, as added by 2004, ch. 325, § 2, p. 973; am. 2008, ch. 379, § 1, p. 1048; am. 2013, ch. 224, § 3, p. 525.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 379, added subsection (5).

The 2013 amendment, by ch. 224, inserted "the fee imposed pursuant to the provisions of section 31-4813, Idaho Code" in subsection (1) and added subsections (6) and (7).

Compiler's Notes.
The term "this act" in subsection (7) refers to S.L. 2013, ch. 224, which is codified as §§ 31-4809, 31-4813, and 31-4818.

Effective Dates.
Section 4 of S.L. 2013, ch. 224 provided that the act should take effect on and after January 1, 2014.

31-4819. Enhanced emergency communications grant fee. — (1) On and after July 1, 2013, there shall be an enhanced emergency communications grant fee established by virtue of authority granted by this chapter. The fee shall be twenty-five cents (25¢) per month per access or interconnected VoIP service line.

(a) Such fee shall be authorized by resolution of a majority vote of the board of commissioners of a countywide system or by the governing board of a 911 service area.

(b) Such fee shall be remitted to the Idaho emergency communications fund provided in section 31-4818(1), Idaho Code, on a quarterly basis by county, city or consolidated emergency communications systems. Such fee shall be dedicated for and shall be authorized for disbursement as grants to eligible entities that are operating consolidated emergency communications systems for use to achieve the purposes of this chapter.

(2) The commission, on an annual basis, shall prepare a budget allocating the grant funds available to eligible entities and the portion of the funds necessary for the continuous operation of the commission to achieve the purposes of this chapter.

(3) To be eligible for grant funds under this chapter, a county or 911 service area must be collecting the emergency communications fee in accordance with section 31-4804, Idaho Code, in the full amount authorized and must also be collecting the enhanced emergency communications grant fee in the full amount authorized in this subsection.

(4) If a county or 911 service area has authorized the collection of the enhanced emergency communications grant fee pursuant to this chapter, such county or 911 service area shall retain the full amount of the emergency communications fee that was set by the board of commissioners or governing board pursuant to section 31-4803, Idaho Code. The county or 911 service area is then also exempt from remitting to the Idaho emergency communications commission one percent (1%) of the total emergency communications fee received by the county or 911 service area as required in section 31-4818(3), Idaho Code. The remaining funds from the enhanced emergency communications grant fee collected shall then be remitted by the county or 911 service area to the Idaho emergency communications commission.

History.

I.C., § 31-4819, as added by 2008, ch. 379, § 2, p. 1049; am. 2013, ch. 260, § 1, p. 636; am. 2014, ch. 97, § 21, p. 265.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 260, in the introductory paragraph in subsection (1), substituted "July 1, 2013," for "July 1, 2008, through June 30, 2014" and "access or" for "access of" and deleted former subsection (2), which read, "On and after July 1, 2014, the collection of the emergency communications fee shall revert to the provisions of sections 31-4801 through 31-4818, Idaho Code."

The 2014 amendment, by ch. 97, substituted "On and after" for "Effective from" at the beginning of subsection (1); and redesignated former paragraphs (1)(c) through (1)(e) as present subsections (2) through (4).

TITLE 32

DOMESTIC RELATIONS

CHAPTER 1

PERSONS

32-101. Minors defined.

JUDICIAL DECISIONS

Cited in: State v. Bettwieser, 143 Idaho 582, 149 P.3d 857 (Ct. App. 2006).

32-106. Contracts of persons without understanding. — A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

History.
R.S., § 2410; reen R.C. & C.L., § 2606; C.S., § 4588; I.C.A., § 31-106; am. 2010, ch. 235, § 10, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, substituted "persons without understanding" for "idiots" in the section heading.

32-107. Contracts of insane persons.

JUDICIAL DECISIONS

Effect of Adjudication.
Comparing § 32-108 and this section, it is evident that the legislature intended that contracts involving persons not adjudicated to be incapacitated are to be voidable and that a person adjudicated to be incompetent is without the legal capacity to contract, until that person has been restored to reason. Rogers v. Household Life Ins. Co., 150 Idaho 735, 250 P.3d 786 (2011).

32-108. Contracts of insane persons after adjudication of incapacity.

JUDICIAL DECISIONS

Effect of Adjudication.

Comparing § 32-107 and this section, it is evident that the legislature intended that contracts involving persons not adjudicated to be incapacitated are to be voidable and that a person adjudicated to be incompetent is without the legal capacity to contract, until that person has been restored to reason. Rogers v. Household Life Ins. Co., 150 Idaho 735, 250 P.3d 786 (2011).

CHAPTER 2

MARRIAGE — NATURE AND VALIDITY OF MARRIAGE CONTRACT

32-201. What constitutes marriage — No common-law marriage after January 1, 1996.

OPINIONS OF ATTORNEY GENERAL

Without a marriage amendment to the Idaho Constitution, a couple who seeks to solemnize their relationship in Idaho could bring a lawsuit alleging that Idaho's marriage statutes violate the due process and equal protection clauses of the Idaho Constitution. A couple that seeks recognition in Idaho of a relationship solemnized in another state could further claim that full faith and credit is due the relationship under the United States Constitution. Although the Idaho Supreme Court would probably reject these challenges under current law, a marriage amendment would bar a challenge under the Idaho Constitution and would strengthen Idaho's current statement of public policy rejecting same-sex marriages formed in other states. OAG 06-1.

32-209. Recognition of foreign or out-of-state marriages.

OPINIONS OF ATTORNEY GENERAL

Without a marriage amendment to the Idaho Constitution, a couple who seeks to solemnize their relationship in Idaho could bring a lawsuit alleging that Idaho's marriage statutes violate the due process and equal protection clauses of the Idaho Constitution. A couple that seeks recognition in Idaho of a relationship solemnized in another state could further claim that full faith and credit is due the relationship under the United States Constitution. Although the Idaho Supreme Court would probably reject these challenges under current law, a marriage amendment would bar a challenge under the Idaho Constitution and would strengthen Idaho's current statement of public policy rejecting same-sex marriages formed in other states. OAG 06-1.

CHAPTER 3

SOLEMNIZATION OF MARRIAGE

SECTION.

32-303. By whom solemnized. — Marriage may be solemnized by any of the following Idaho officials: a current or retired justice of the supreme court, a current or retired court of appeals judge, a current or retired district judge, the current or a former governor, the current lieutenant governor, a

current or retired magistrate of the district court, a current mayor or by any of the following: a current federal judge, a current tribal judge of an Idaho Indian tribe or other tribal official approved by an official act of an Idaho Indian tribe or priest or minister of the gospel of any denomination. To be a retired justice of the supreme court, court of appeals judge, district judge or magistrate judge of the district court, for the purpose of solemnizing marriages, a person shall have served in one (1) of those offices and shall be receiving a retirement benefit from either the judges retirement system or the public employee retirement system for service in the Idaho judiciary.

History.

1863, p. 613, § 4; R.S., § 2431; reen. R.C. & C.L., § 2622; C.S., § 4602; I.C.A., § 31-303; am. 1969, ch. 116, § 1, p. 374; am. 1983, ch. 18, § 3, p. 52; am. 1994, ch. 7, § 1, p. 11; am. 1997, ch. 196, § 1, p. 554; am. 2000, ch. 212, § 1, p. 572; am. 2008, ch. 46, § 1, p. 119.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 46, in the first sentence, substituted "any of the following Idaho officials" for "either," deleted "any federal judge" following "district judge," inserted "the current" preceding "lieutenant governor" and "a current" preceding "mayor" and inserted "or by any of the following: a current federal judge, a current tribal judge of an Idaho Indian tribe or other tribal official approved by an official act of an Idaho Indian tribe or"; and in the last sentence, inserted "Idaho" near the end.

CHAPTER 4

MARRIAGE LICENSES, CERTIFICATES, AND RECORDS

32-401. Marriage license — Contents. — The county recorder of any county in this state shall have authority to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony, authorizing the marriage of such parties, which licenses shall be substantially in the following form:

Know all men by this certificate that any regularly ordained minister of the gospel, authorized by the rites and usages of the church or denomination or religious body of which he may be a member, or any judge or competent officer to whom this may come, he not knowing of any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between ...., of .... of the county of ...., and the state of ...., and ...., of .... of the county of ...., state of ...., and to certify the same to said parties, or either of them, under his hand and seal, in his ministerial or official capacity, and thereupon he is required to return his certificate in form following as hereto annexed.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at ...., this .... day of ...., ...

.... Recorder.

History.
1895, p. 166, § 1; reen. 1899, p. 278, § 1; am. R.C. & C.L., § 2629; C.S., § 4609; I.C.A., § 31-401; am. 2002, ch. 32, § 11, p. 46; am. 2012, ch. 20, § 16, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, deleted "of Christians, Hebrews" following "church or denomination" and deleted "or justice of the peace" preceding "or competent office" in the first paragraph of the form.

32-402. Certificate and return. — The form of certificate annexed to said license, and therein referred to, shall be as follows:

I, ..., a ...., residing at ...., in the county of ...., in the state of Idaho, do certify that, in accordance with the authority on me conferred by the above license, I did on this .... day of ...., in the year ...., at ...., in the county of ...., in the state of Idaho, solemnize the rights of matrimony between ...., of ...., in the county of ...., of the state of ...., and ...., of ...., of the county of ...., of the state of ...., in the presence of .... and ....

Witness my hand and seal at the county aforesaid, this .... day of ...., ...

In the presence of .... [Seal]

....

The license and certificate, duly executed by the minister or officer who shall have solemnized the marriage authorized, shall be returned by him to the office of the recorder who issued the same, within thirty (30) days from the date of solemnizing the marriage therein authorized; and a neglect to make such return shall be deemed a misdemeanor, and the person whose duty it shall be to make such return, who shall neglect to make such return within the time above specified, shall, upon conviction thereof, be punished by a fine of not less than twenty dollars ($20.00) nor more than fifty dollars ($50.00) to be assessed by any court having jurisdiction.

History.
1895, p. 166, § 2; reen. 1899, p. 278, § 2; reen. R.C. & C.L., § 2630; C.S., § 4610; I.C.A., § 31-402; am. 2002, ch. 32, § 12, p. 46; am. 2012, ch. 20, § 17, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, deleted "justice of the peace or other" preceding "court having jurisdiction" near the end of the last paragraph.

32-413. Form of medical certificate. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised, 1943, ch. 42, § 2, p. 83; am. 1979, ch. 57, § 3, p. 150, was repealed by S.L. 2009, ch. 11, § 7.

CHAPTER 6

DIVORCE — GROUNDS AND DEFENSES

32-601. Dissolution of marriage.

JUDICIAL DECISIONS

Separation.

In Idaho, the characterization of an asset as community or separate property depends on the date and source of the property's acquisition. Where divorce proceedings were pending at the time of a husband's death but a final divorce decree had not been entered, the marital community continued to exist until the husband's death, and community property principles applied. Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 206 P.3d 481 (2009).

CHAPTER 7

DIVORCE ACTIONS

32-704. Allowance of support money, court costs and attorney fees — Representation of child.

JUDICIAL DECISIONS

ANALYSIS

Award of costs and attorney's fees.
Jurisdiction.

Award of Costs and Attorney's Fees.

In a property division action as part of a divorce, a former wife was not entitled to attorney's fees because the previously unsettled state of the law on the characterization of professional goodwill made an award of attorneys fees inappropriate, and because the wife made no showing of necessity to the court. Stewart v. Stewart, 143 Idaho 673, 152 P.3d 544 (2007).

Jurisdiction.

Idaho appellate courts will not ordinarily order attorney's fees under this section unless an award is essential to enable the exercise of appellate jurisdiction. Where, without any award of attorney's fees for appellate proceedings, wife was able to respond to husband's appeal to the court of appeals, pursue a second motion for attorney's fees before the magistrate, and, albeit improperly, present argument on appeal challenging the magistrate's denial of that second motion, she has not demonstrated that an attorney's fee order from an appellate court is necessary for the exercise of that court's appellate jurisdiction. Olson v. Montoya, 147 Idaho 833, 215 P.3d 553 (Ct. App. 2009).

Cited in: Pelayo v. Pelayo, 154 Idaho 855, 303 P.3d 214 (2013).

32-705. Maintenance.

JUDICIAL DECISIONS

ANALYSIS

Basis for award.

Findings upheld.
In general.

Basis for Award.

The magistrate court did not abuse its discretion by granting the wife a spousal maintenance award, because she lacked sufficient income to provide for her reasonable needs or to support herself even with full time employment. The court considered the longevity of the parties' marriage, along with the wife's limited English skills, age, and lack of employment history. Pelayo v. Pelayo, 154 Idaho 855, 303 P.3d 214 (2013).

Findings Upheld.

Magistrate judge's award of spousal support to a former wife for twelve years was supported by substantial evidence, in light of: (1) the dramatically different earning capacity of the husband, calculated to 25 times that of the wife; (2) the wife's future inability to support herself when she had a progressive disability; and (3) the parties' monthly expenses. The community property awarded to the wife did not render the amount of spousal support excessive because nothing required the wife to exhaust her assets before an award of maintenance was appropriate. Stewart v. Stewart, 143 Idaho 673, 152 P.3d 544 (2007).

In General.

Magistrate did not err in denying a wife's request for spousal maintenance, where the record supported the magistrate's conclusion that the wife had sufficient property to provide for her reasonable needs and that she would be able to support herself once she obtained her nursing certification. Moffett v. Moffett, 151 Idaho 90, 253 P.3d 764 (Ct. App. 2011).

32-706. Child support. — (1) In a proceeding for divorce or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support and education until the child is eighteen (18) years of age, without regard to marital misconduct, after considering all relevant factors which may include:

(a) The financial resources of the child;

(b) The financial resources, needs, and obligations of both the custodial and noncustodial parents which ordinarily shall not include a parent's community property interest in the financial resources or obligations of a spouse who is not a parent of the child, unless compelling reasons exist;

(c) The standard of living the child enjoyed during the marriage;

(d) The physical and emotional condition and needs of the child and his or her educational needs;

(e) The availability of medical coverage for the child at reasonable cost as defined in section 32-1214B, Idaho Code;

(f) The actual tax benefit recognized by the party claiming the federal child dependency exemption.

(2) If the child continues his high school education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, and after considering all relevant factors which include those set forth in subsection (1) of this section, order the continuation of support payments until the child discontinues his high school education or reaches the age of nineteen (19) years, whichever is sooner.

(3) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

(4) In a proceeding for the support of a child or a minor parent the court may order the parent(s) of each minor parent to pay an amount reasonable

or necessary for the support and education of the child born to the minor parent(s) until the minor parent is eighteen (18) years of age, after considering all relevant factors which may include:

(a) The financial resources of the child;

(b) The financial resources of the minor parent;

(c) The financial resources, needs and obligations of the parent of the minor parent;

(d) The physical and emotional condition and needs of the child and his or her educational needs; and

(e) The availability of medical coverage for the child at reasonable cost as defined in section 32-1214B, Idaho Code.

(5) The legislature hereby authorizes and encourages the supreme court of the state of Idaho to adopt and to periodically review for modification guidelines that utilize and implement the factors set forth in subsections (1) through (4) of this section to create a uniform procedure for reaching fair and adequate child support awards. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court. When adopting guidelines, the supreme court shall provide that in a proceeding to modify an existing award, children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered.

History.

I.C., § 32-706, as added by 1980, ch. 378, § 5, p. 961; am. 1986, ch. 222, § 4, p. 593; am. 1989, ch. 411, § 1, p. 1003; am. 1990, ch. 410, § 1, p. 1137; am. 1996, ch. 430, § 1, p. 1462; am. 1998, ch. 292, § 5, p. 928; am. 2000, ch. 107, § 1, p. 236; am. 2000, ch. 412, § 1, p. 1305; am. 2008, ch. 328, § 1, p. 899.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 328, added "as defined in section 32-1214B, Idaho Code" at the end of paragraphs (1)(e) and (4)(e).

JUDICIAL DECISIONS

New Marital Community Income.

While considering a father's petition for modification of child support, a district court and a magistrate were not required to consider a mother's interest in her new husband's income in computing her share of a child support obligation, as no compelling reason for such consideration existed. The disparity between the father's income and that of the mother's new marital community was insufficient, in itself, to constitute a compelling circumstance. Harris v. Carter, 146 Idaho 22, 189 P.3d 484 (Ct. App. 2008).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 USCS § 1738B — State cases. 18 A.L.R.6th 97.

Validity, construction, and application of state statutes providing for revocation of driver's license for failure to pay child support. 30 A.L.R.6th 483.

32-709. Modification of provisions for maintenance and support.

JUDICIAL DECISIONS

Movant in Contempt.

Father's timely post-trial motion under Idaho R. Civ. P. 59(e) to obtain relief from the judgment due to an error of law in applying the child support guidelines made by the magistrate court in its initial decision was not barred by the rule that precluded child support modifications where the obligor parent was in arrears on his child support obligation because the motion was not a motion to modify under this section, but was a permissible request for the correction of an error of law. Moffett v. Moffett, 151 Idaho 90, 253 P.3d 764 (Ct. App. 2011).

Cited in: Mackowiak v. Harris, 146 Idaho 864, 204 P.3d 504 (2009).

Decisions Under Prior Law

Contempt of Court.

Editor's note: *Lusty v. Lusty*,70 Idaho 382, 210 P.2d 280 (1950), cited in a case note under this heading in the 2006 bound volume, was overruled, on the point that a party may not file a motion without first purging a contempt charge against him, by *State Dep't of Health & Welfare v. Slane*, — Idaho —, 311 P.3d 286 (2013).

RESEARCH REFERENCES

A.L.R. — Retirement of husband as change of circumstances warranting modification of divorce decree — Conventional retirement at 65 years of age or older. 11 A.L.R.6th 125.

Retirement of husband as change of circumstances warranting modification of divorce decree — Early retirement. 36 A.L.R.6th 1.

32-712. Community property and homestead — Disposition.

JUDICIAL DECISIONS

Analysis

Division.
—Manner.
——Equality.
Effect of decree.
Goodwill of a business.
Jurisdiction of court.
Postnuptial agreement.
Separate property.
Unequal division.

Division.

—Manner.

——Equality.

The award of the husband's full 401(k) account to the husband resulted in an unequal division of the marital property with the husband receiving an award of $133,303, while the wife was awarded less than $100,000, in violation of the provisions of this section. Moffett v. Moffett, 151 Idaho 90, 253 P.3d 764 (Ct. App. 2011).

Effect of Decree.

Divorce decree, in which husband was awarded all the equity in the homestead subject to an obligation to pay the wife a portion of her equity, divested the wife of her real property interest in the house and converted it into a lien, which was a personal property interest. Therefore, the wife was not entitled to relief from a sheriff's sale of the homestead arising from her failure to make certain payments to the husband, because she was provided notice via mail for an execution against

personal property. Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

Goodwill of a Business.

In a property division action as part of divorce, a magistrate judge did not abuse its discretion in determining that a former husband's medical practice had value in goodwill in excess of the husband's personal skills when the judge relied on the capitalized excess earnings method to calculate the value and considered other factors that had separate value from the husband's skills. To the extent a professional services corporation has goodwill value beyond personal assets of knowledge, skill, and background of the professional, that goodwill is community property. Stewart v. Stewart, 143 Idaho 673, 152 P.3d 544 (2007).

Jurisdiction of Court.

Because the convertible notes and stock allocations were community property at the time of the parties' divorce and were divided pursuant to the property settlement agreement, the magistrate court had jurisdiction to interpret and enforce the terms of the agreement. Borley v. Smith, 149 Idaho 171, 233 P.3d 102 (2010).

Postnuptial Agreement.

Although the wife had a contingent community interest in convertible notes, which were issued to replace a terminated pension plan, the notes were not assets that were omitted from the agreement, but were divided under the division of retirement benefits section of the agreement, which the trial court could not modify, but could enforce. Borley v. Smith, 149 Idaho 171, 233 P.3d 102 (2010).

Separate Property.

By awarding the mother the right to care for the children on certain mornings at the father's home, the magistrate judge in effect awarded her the right to enter and use the father's separate property, which was impermissible under this section, as the court had no power or authority to award all or any part of the father's separate property to the mother as part of the divorce decree. Schneider v. Schneider, 151 Idaho 415, 258 P.3d 350 (2011).

Unequal Division.

District court erred where it did not recognize that it had discretion under paragraph 1 to consider whether the ex-wife's claimed reasons were compelling enough to order an unequal division of property. Dunagan v. Dunagan, 147 Idaho 599, 213 P.3d 384 (2009).

RESEARCH REFERENCES

A.L.R. — Inherited property as marital or separate property in divorce action. 38 A.L.R.6th 313.

Divorce and separation: Appreciation in value of separate property during marriage with contribution by either spouse as separate or community property (doctrine of "active appreciation"). 39 A.L.R.6th 205.

Validity of postnuptial agreements in contemplation of divorce. 77 A.L.R.6th 293.

32-713. Community property and homestead — Order for disposition.

JUDICIAL DECISIONS

ANALYSIS

Allocation of property.
Jurisdiction.

Allocation of Property.

Divorce decree, in which husband was awarded all the equity in the homestead subject to an obligation to pay the wife a portion of her equity, divested the wife of her real property interest in the house and converted it into a lien, which was a personal property interest. Therefore, the wife was not entitled to relief from a sheriff's sale of the homestead arising from her failure to make certain payments to the husband, because she was provided notice via mail for an execution against personal property. Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

Jurisdiction.

Because the convertible notes and stock allocations were community property at the time of the parties' divorce and divided and pursuant to the property settlement agreement, the magistrate court had jurisdiction to interpret and enforce the terms of the agreement. Borley v. Smith, 149 Idaho 171, 233 P.3d 102 (2010).

32-714. Community property and homestead — Revision on appeal.

JUDICIAL DECISIONS

Discretion of Trial and Appellate Courts.

Transmutation of property is a question of fact turning on intent, and trial courts may consider evidence beyond an unambiguous deed when deciding claims of transmutation of property. Factors to look at include (1) whether the community was liable for payment on the loan; (2) the source of the payments toward the loan; (3) the basis of credit upon which the lender relied in making the loan; (4) the nature of the down payment; (5) the names on the deed; and (6) who signed the documents of indebtedness. Barrett v. Barrett, 149 Idaho 21, 232 P.3d 799 (2010).

32-717. Custody of children — Best interest. — (1) In an action for divorce the court may, before and after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper in the best interests of the children. The court shall consider all relevant factors which may include:

(a) The wishes of the child's parent or parents as to his or her custody;

(b) The wishes of the child as to his or her custodian;

(c) The interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;

(d) The child's adjustment to his or her home, school, and community;

(e) The character and circumstances of all individuals involved;

(f) The need to promote continuity and stability in the life of the child; and

(g) Domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child.

(2) If the parent has a disability as defined in this section, the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Evaluations of parental fitness shall take into account the use of adaptive equipment and supportive services for parents with disabilities and shall be conducted by, or with the assistance of, a person who has expertise concerning such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(3) In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interests of the child.

(4) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual

tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(5) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what effect, if any, the court finds the disability has on the best interests of the child.

(6) With reference to this section, when an active member of the Idaho national guard has been ordered or called to duty as defined in section 46-409, Idaho Code, or when a member of the military reserve is ordered to active federal service under title 10, United States Code, such military service thereunder shall not be a substantial or material and permanent change in circumstance to modify by reducing the member's previously decreed child custody and visitation privileges.

History.

1874, p. 639, § 7; R.S., § 2473; reen. R.C. & C.L., § 2663; C.S., § 4643; I.C.A., § 31-705; am. and redesig. 1980, ch. 378, § 3, p. 961; am. 1992, ch. 228, § 1, p. 678; am. 1995, ch. 128, § 1, p. 561; am. 2002, ch. 232, § 1, p. 663; am. 2003, ch. 250, § 1, p. 648; am. 2007, ch. 108, § 1, p. 313.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 108, inserted "or when a member of the military reserve is ordered to active federal service under title 10, United States Code" in subsection (6).

JUDICIAL DECISIONS

Analysis

Application.
Best interest of child.
Constitutionality.
Custody.
—Modification of custody and visitation provisions.
Disability.
Grandparents.
Greater relationship.
Jurisdiction of court.

—Domicile of parent.
—Modification of decree.
Procedure.
—Burden of proof.
Removal of child from state.

Application.

When two minor children were orphaned when their parents were killed in a car accident, the maternal grandmother was named testamentary guardian in accordance with the terms of the parents' will. When petitioner, paternal grandparents, petitioned for guardianship, the magistrate erred by appointing them as co-guardians; petitioners had no rights under this section, which only applies to divorce proceedings. Heiss v. Conti (In re Doe), 148 Idaho 432, 224 P.3d 499 (2009).

Best Interest of Child.

Editor's note: *Brown v. Brown*, 66 Idaho 625, 165 P.2d 886 (1946), cited in a case note under this heading in the 2006 bound volume, was overruled, on the point that a party may not file a motion without first purging a contempt charge against him, by *State Dep't of Health & Welfare v. Slane*, — Idaho —, 311 P.3d 286 (2013).

After the husband pleaded guilty to domestic battery, his wife left Idaho and fled to Oregon with their minor child. The magistrate court abused its discretion by ordering the wife to return with their child to Boise or surrender child custody. It was error for the magistrate court to fail to analyze the child's best interest. Schultz v. Schultz, 145 Idaho 859, 187 P.3d 1234 (2008).

Magistrate erred in finding that no "best interest" evidence had been presented by the father. Idaho law does not require the testimony of a psychologist, a doctor, a teacher or any other particular witness in order to establish that a change in the shared custody schedule would be in the best interest of a child. Neither is there a requirement under Idaho law that a child behave badly in the current custody arrangement before a change in visitation in the best interest of the child is warranted. Drinkall v. Drinkall, 150 Idaho 606, 249 P.3d 405 (Ct. App. 2011).

District court's determination that it was in the best interest of a child to reside primarily in Idaho was not an abuse of discretion: the child's adjustment to home, school, and community favored shared custody in Idaho, a move to Nevada with the child's mother would not have had a positive effect on the child's relationship with the child's father, and custody in Idaho promoted more continuity and stability in the child's life. Clair v. Clair, 153 Idaho 278, 281 P.3d 115 (2012).

Constitutionality.

Subsection (3) of this section is facially constitutional and constitutional as applied to the father, where the magistrate, who granted the parties shared physical custody of the children, gave due regard to the father's parental rights, but balanced them with the competing interests of the children. Hernandez v. Hernandez, 151 Idaho 882, 265 P.3d 495 (2011).

Custody.

Magistrate did not err in considering the parents' employment schedules where the parties' work schedules and need for third-party child care were relevant to the court's inquiry, especially given that the father worked a night shift; the trial court considered the other relevant factors even though it gave the father's work schedule great weight. Silva v. Silva, 142 Idaho 900, 136 P.3d 371 (Ct. App. 2006).

In a child custody determination, a magistrate judge heard testimony about certain factors, and the magistrate judge made findings, but it was clear that neither party substantially exceled above the other as a parent. The magistrate judge made his determination of custody based on substantial evidence, and the magistrate judge did not abuse his discretion. Navarro v. Yonkers, 144 Idaho 882, 173 P.3d 1141 (2007).

Award of sole physical custody of two children to the mother was proper where she had served as the children's primary caregiver their entire lives, she was best able to meet their physical and psychological needs consistently, and the father inappropriately involved the children in his conflict with the mother. Danti v. Danti, 146 Idaho 929, 204 P.3d 1140 (2009).

Under subsection (1), the magistrate judge's decision to award the father primary physical custody of the children was based on objectively supportable grounds because 1) there was substantial evidence to support the magistrate judge's finding that the mother's use of medications might impair her ability to provide proper parental care; 2) the mother did not alert the supreme court to any evidence which called into question the father's ability to parent; and 3) the magistrate judge was not biased. Schneider v. Schneider, 151 Idaho 415, 258 P.3d 350 (2011).

By awarding the mother the right to care for the children on certain mornings at the father's home, the magistrate judge in effect awarded her the right to enter and use the father's separate property, which was impermissible under § 32-712, as the court had no power or authority to award all or any part of

the father's separate property to the mother as part of the divorce decree. Schneider v. Schneider, 151 Idaho 415, 258 P.3d 350 (2011).

—Modification of Custody and Visitation Provisions.

Despite the absence of a request by the parties to modify the holiday visitation schedule, the magistrate judge was within his discretion to do so. The magistrate judge properly concluded that the mother's move constituted a material change in circumstances that required a revision of the visitation schedule to serve the best interests of the children to reduce the time they spend riding in cars. Nelson v. Nelson, 144 Idaho 710, 170 P.3d 375 (2007).

A trial court is without authority to modify a child custody order if the movant is in contempt for nonpayment of support, unless the movant shows that, for reasons beyond the movant's control, purging himself or herself of the contempt is impossible. Rodriguez v. Rodriguez, 150 Idaho 614, 249 P.3d 413 (Ct. App. 2011).

Disability.

Failure of a magistrate judge to explicitly notify mother of her rights under subsection (2) was a harmless, technical violation, as the record showed that she was on notice that the effects of any disability that she suffered from were at issue and she was provided an opportunity to present evidence on the issue of her use of medications. Schneider v. Schneider, 151 Idaho 415, 258 P.3d 350 (2011).

Grandparents.

Grandparents' appeal from an order denying them grandparent custody, under subsection (3) of this section, was moot because (1) the grandparents were appointed as their grandson's guardians; (2) as guardians, the grandparents had custody of their grandson; (3) until the guardianship was terminated, a guardian's right to custody of a minor was superior to that of the minor's parent, under § 15-5-209; and (4) granting the grandparents custody under subsection (3) of this section would not have given them any greater rights with respect to their grandson than they already had as his guardians. Doe v. Doe (In re Doe), 145 Idaho 337, 179 P.3d 300 (2008).

Subsection (3) merely grants an actual custodial grandparent the same standing as a parent for evaluating what custody arrangements are in the best interests of the child in a divorce action. Hernandez v. Hernandez, 151 Idaho 882, 265 P.3d 495 (2011).

Greater Relationship.

Trial court erred in disregarding the presumption for joint custody and determining that mother's greater relationship with child indicated that giving her sole legal and physical custody would be in the child's best interests, where her greater relationship was primarily due to her illegal actions of absconding with the child to another state and obtaining a false domestic violence protection order there. Hopper v. Hopper, 144 Idaho 624, 167 P.3d 761 (2007).

Jurisdiction of Court.

—Domicile of Parent.

Court erred in entering an order preventing the mother from moving out of state, even without the child. Under this section, a trial court does not have unlimited authority to order the parents to do anything that the trial court believes is in the best interests of the child, and the trial court has no authority to order the mother to reside in any particular geographical location. Allbright v. Allbright, 147 Idaho 752, 215 P.3d 472 (2009).

In custody cases, an Idaho court may not dictate where a parent will live. Rather, the court may only issue orders for the custody and care of children in view of the location or relocation of the parents' places of residence. Markwood v. Markwood, 152 Idaho 756, 274 P.3d 1271 (Ct. App. 2012).

—Modification of Decree.

Granting the father sole legal and primary physical custody of the parties' son was in the son's best interest because the mother's conduct was directly affecting the son's relationship with the father; the trial court had evidence of the mother's three and one-half years of intransigence. Doe v. Doe (In re Doe), 149 Idaho 669, 239 P.3d 774 (2010).

Procedure.

—Burden of Proof.

The relocating parent has the burden of proving that it would be in the child's best interests to allow relocation of the child rather than to award primary physical custody to the other parent. Markwood v. Markwood, 152 Idaho 756, 274 P.3d 1271 (Ct. App. 2012).

Removal of Child from State.

Magistrate did not abuse his discretion by denying the mother's request to modify the custody order and move with her child to hawaii because: (1) the magistrate considered many factors relevant to whether the custodial parent should be permitted to relocate with a child, including the mother's motive for the move, the extent alternative visitation would allow the father and his daughter to maintain a close relationship, and the effect of the move on the daughter's extended family; (2) the magistrate did not apply an irrebuttable presumption against the physi-

cal separation of the child and the non-custodial father; and (3) the magistrate's findings of fact and conclusions of law were supported by the evidence, including his finding that the mother interfered with the father's relationship with the daughter and that the mother had a negative attitude toward the father. Bartosz v. Jones, 146 Idaho 449, 197 P.3d 310 (2008).

Pursuant to subsection (1), because the possibility of economic, emotional, and educational enhancements favored the move and because the mother had been the most consistent and stable parent, the mother retained primary physical custody of the children after she moved from Idaho to Oregon. Markwood v. Markwood, 152 Idaho 756, 274 P.3d 1271 (Ct. App. 2012).

Trial court did not err in awarding primary physical custody of the parties' five children to the mother, with visitation to the father, and in permitting mother to move to Utah: mother had family in Utah, the move to Utah would allow the mother to stay at home with the children while earning an income by performing secretarial work for her brother, and mother planned on residing with her father. Peterson v. Peterson, 153 Idaho 318, 281 P.3d 1096 (2012).

Cited in: Heinze v. Bauer, 145 Idaho 232, 178 P.3d 597 (2008).

RESEARCH REFERENCES

A.L.R. — Effect of parent's military service upon child custody. 21 A.L.R.6th 577.

Parents' work schedules and associated dependent care issues as factors in child custody determinations. 26 A.L.R.6th 331.

32-717B. Joint custody.

JUDICIAL DECISIONS

ANALYSIS

Greater relationship.
Limitation on court.
Modification of custody.
Presumption overcome.
Relocation.
Violation.

Greater Relationship.

Trial court erred in disregarding the presumption for joint custody and determining that mother's greater relationship with child indicated that giving her sole legal and physical custody would be in the child's best interests, where her greater relationship was primarily due to her illegal actions of absconding with the child to another state and obtaining a false domestic violence protection order there. Hopper v. Hopper, 144 Idaho 624, 167 P.3d 761 (2007).

Limitation on Court.

Idaho favors the active participation of both parents in raising children after divorce, which policy is reflected in this section, supporting joint custody. However, the magistrate court has no authority to order a parent to reside in any particular geographical location. Allbright v. Allbright, 147 Idaho 752, 215 P.3d 472 (2009).

While Idaho favors the active participation of both parents in raising children after divorce, which policy is reflected in this section, the court has no authority to order either parent to reside in any particular geographical location. Markwood v. Markwood, 152 Idaho 756, 274 P.3d 1271 (Ct. App. 2012).

Modification of Custody.

Evidence showed that the parents had proven incapable of making joint decisions about school enrollment, and each had changed the children's school enrollment without consulting the other. Magistrate's decision, which limited the mother's unilateral authority solely to choosing the children's schools and continued joint legal custody with respect to all other questions concerning the children's education, health and general welfare, was not an abuse of discretion. Silva v. Silva, 142 Idaho 900, 136 P.3d 371 (Ct. App. 2006).

After the husband pleaded guilty to domestic battery, his wife left Idaho and fled to Oregon with their minor child. Magistrate court abused its discretion by ordering the wife to return with their child to Boise or surrender child custody. It was error for the magistrate court to fail to make findings on the wife's argument that the husband's habitual domestic violence overcame the presumption that joint custody was in the child's best

interest. Schultz v. Schultz, 145 Idaho 859, 187 P.3d 1234 (2008).

In ruling on a mother's request to move with her child to Hawaii, a magistrate needs to consider this section's presumption in favor of joint custody and frequent and continuing contact between both parents and the child, as well as all of the factors listed in § 32-717. However, the presumption is not irrebutable. Bartosz v. Jones, 146 Idaho 449, 197 P.3d 310 (2008).

Presumption Overcome.

Award of sole physical custody of two children to the mother was proper where she had served as the children's primary caregiver their entire lives, she was best able to meet their physical and psychological needs consistently, and the father inappropriately involved the children in his conflict with the mother. Because an award of sole physical custody to the mother was in the children's best interests, the joint custody presumption was overcome and the custody award was not an abuse of discretion. Danti v. Danti, 146 Idaho 929, 204 P.3d 1140 (2009).

In a custody modification proceeding, the trial court did not err in concluding that granting the father sole legal and primary physical custody of the parties' son was in the son's best interest because the mother's conduct was directly affecting the son's relationship with the father; the trial court had evidence of the mother's three and one-half years of intransigence. Doe v. Doe (In re Doe), 149 Idaho 669, 239 P.3d 774 (2010).

Relocation.

The relocating parent has the burden of proving that it would be in the child's best interests to allow relocation of the child rather than to award primary physical custody to the other parent. Markwood v. Markwood, 152 Idaho 756, 274 P.3d 1271 (Ct. App. 2012).

District court's determination that it was in the best interest of a child to reside primarily in Idaho was not an abuse of discretion; the child's adjustment to home, school, and community favored shared custody in Idaho, a move to Nevada with the child's mother would not have had a positive effect on the child's relationship with the child's father, and custody in Idaho promoted more continuity and stability in the child's life. Clair v. Clair, 153 Idaho 278, 281 P.3d 115 (2012).

Violation.

Where father had joint physical custody of a child under a parenting plan, defendant/mother, who did not deliver the child to the father per the parenting plan and who concealed the child from the father for eight months, could be charged and convicted of kidnapping under § 18-4501(2). State v. Anderson, 154 Idaho 54, 294 P.3d 180 (2013).

Cited in: State v. Calver, — Idaho —, 307 P.3d 1233 (Ct. App. 2013).

32-717D. Parenting coordinator. — (1) Provided that a court has entered a judgment or an order establishing child custody in a case, the court may order the appointment of a parenting coordinator to perform such duties as authorized by the court, consistent with any controlling judgment or order of a court relating to the child or children of the parties, and as set forth within the order of appointment. The court shall direct the parenting coordinator to provide a status report to the court at a time and in a manner as determined by the court. Provided however, that the court shall require the parenting coordinator to provide a minimum of one (1) status report to the court at least once every six (6) months. At any time during the period of appointment, the court, on its own initiative, or upon request of the parenting coordinator or either party, may hold a status conference to review the continued appointment of the coordinator and/or the status of the case.

(2) Qualification, selection, appointment, termination of appointment, and prescribed duties and responsibilities of a parenting coordinator shall be based upon standards and criteria as adopted by the Idaho supreme court. Provided however, that standards and criteria for qualification and selection of a parenting coordinator, as adopted by the Idaho supreme court, shall not apply to a parenting coordinator selected and agreed to by the parties. In addition, as a condition of any appointment, a parenting coordinator shall:

(a) Be neutral to the dispute and to the parties;

(b) Be either selected pursuant to agreement of the parties or appointed by the court; and

(c) Prior to any appointment, and at their own cost, have submitted to a criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau, the federal bureau of investigation criminal history check, the national crime information center and the statewide sex offender register. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho with a copy going to the applicant and shall be available for review by the court considering a parenting coordinator appointment prior to an appointment.

(3) In addition to those duties as authorized by the court pursuant to the order of appointment, the responsibilities of a parenting coordinator shall include collaborative dispute resolution in parenting. The parenting coordinator shall act to empower the parties in resuming parenting controls and decision-making, and minimize the degree of conflict between the parties for the best interests of the children.

(4) The court shall allocate the fees and costs of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable costs, fees and disbursements of the parenting coordinator. Any dispute regarding payment of the fees and costs of the parenting coordinator shall be subject to review by the court upon request of the parenting coordinator or either party.

(5) The court may award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator.

History.

I.C., § 32-717D, as added by 2002, ch. 108, § 1, p. 306; am. 2012, ch. 45, § 1, p. 139; am. 2014, ch. 163, § 1, p. 458.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 45, deleted the first sentence of former paragraph (2)(d), which read: "Agree to appointment without requiring the parties to pay a retainer for services"; and transferred the second sentence of former paragraph (2)(d) to be the second sentence in subsection (4).

The 2014 amendment, by ch. 163, added subsection (5).

JUDICIAL DECISIONS

Authority.

Although the parenting coordinator acted without any specific authority in making recommendations and decisions regarding the parties' custody issues, this section and Idaho R. Civ. P. 16(l)(1) grant a coordinator the general authority to take actions that empower the parties to engage in effective parenting; on remand, the district court had to determine the coordinator's reimbursement rate, based on which of his actions fell within that general grant of authority. Hausladen v. Knoche, 149 Idaho 449, 235 P.3d 399 (2010).

32-717E. Supervised access providers — Record checks. — In cases in which a court has ordered that contact between a person and one (1) or more children shall take place only in the presence of an approved

provider, or where the court has ordered supervised exchanges or transfers of one (1) or more children, the court may appoint an individual or entity as a supervised access provider to provide such supervised access or to facilitate such exchanges or transfers. The qualifications and duties of supervised access providers shall be as specified in rules adopted by the supreme court. A supervised access provider who is paid for providing supervised access services shall, prior to acting in such capacity and at his or her own cost, submit to a fingerprint-based criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau check, federal bureau of investigation criminal history check, child abuse registry check, adult protection registry check and statewide sex offender registry check. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho.

History.
I.C., § 32-717E, as added by 2007, ch. 106, § 1, p. 310.

32-720. Petitions for modification — Child custody orders — Servicemembers. — (1) In the event a petition for modification of a child custody order is filed during the time that the court action may be subject to the servicemembers civil relief act, 50 U.S.C. App. section 501 et seq., because one (1) of the parties is a servicemember as defined in said act, the court shall determine if said act applies to the action pursuant to the jurisdiction provisions of the act. If the court determines that the act does apply, the court shall thereafter act in compliance with the terms of said act and, in addition, the following shall apply to the extent not in violation of said act:

(a) If the court determines that modification is in the best interest of the child pursuant to the provisions of section 32-717, Idaho Code, and the party who is a servicemember is deployed, the court may only enter an order or decree temporarily modifying the existing child custody order during the period of deployment, and upon completion by the servicemember of the period of deployment, the order or decree shall expire sixty (60) days after notification to the court, and to all persons entitled to notice in the action, of the deployed servicemember's completion of deployment. Provided however, that:

(i) The court may thereafter conduct an expedited or emergency hearing for resolution of the child's custody on the filing of a motion, filed prior to the expiration of the order, alleging that it would not be in the best interests of the child pursuant to the provisions of section 32-717, Idaho Code, if the order expires;

(ii) If a motion is so filed, the temporary order shall be extended until the court rules on the motion; and

(iii) Following the return from deployment of a deploying parent and until the temporary order for child custody is terminated, the court shall enter a temporary order granting the deploying parent reasonable

contact with the child unless it is contrary to the best interests of the child pursuant to the provisions of section 32-717, Idaho Code.

(b) If the deployment of a party who is a servicemember affects the party's ability or anticipated ability to appear at a regularly scheduled hearing related to a petition for modification of child custody, the court may provide for an expedited hearing to allow the servicemember to appear.

(c) If the deployment of a party who is a servicemember prevents the servicemember from appearing in person at a hearing related to a petition for the modification of child custody, the court may provide, upon reasonable advance notice to the parties, for the servicemember to present testimony and evidence by electronic means, if such can be done without prejudice to the ability of the servicemember to adequately and reasonably present such testimony and evidence.

(2) For purposes of this section:

(a) "Deployed" or "deployment" means military service performed in compliance with a valid order received by an active duty or reserve member of the armed services of the United States, national guard or United States coast guard to report for combat operations, contingency operations, peacekeeping operations, temporary duty, a remote tour of duty or other active service for which the deploying party reports. The term shall include those members who are actually deployed as well as those members with valid orders preparing to be deployed;

(b) "Electronic means" includes communication by telephone, video teleconference or the internet.

History.
I.C., § 32-720, as added by 2013, ch. 215, § 1, p. 506.

CHAPTER 9

HUSBAND AND WIFE — SEPARATE AND COMMUNITY PROPERTY

32-903. Separate property of husband and wife.

JUDICIAL DECISIONS

ANALYSIS

Characterization of property.
Conveyance between spouses.
Presumption.
Property acquired from proceeds of separate property.
Retirement benefits.

Characterization of Property.

Whether a specific piece of property is characterized as community or separate property depends on when it was acquired and the source of the funds used to purchase it. The character of property vests at the time the property is acquired. Kraly v. Kraly, 147 Idaho 299, 208 P.3d 281 (2009).

Conveyance Between Spouses.

Where a debtor and his wife purchased a motorcycle prior to their marriage, it was not

community property under § 32-906; so when the debtor transferred his interest in the motorcycle to his wife after their marriage, it was her separate property from that time forward under this section. Because the motorcycle became her separate property at that time, the debtor did not transfer an interest in the motorcycle to his wife within the applicable reach back period in 11 U.S.C.S. § 548(a) or in the four-year period provided in § 55-918, as applicable to the fraudulent transfer provisions in §§ 55-913(1)(a), (1)(b) and 55-914(a). Rainsdon v. Kirtland (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Presumption.

Chapter 7 debtor who claimed a homestead exemption in real property she owned in Idaho was entitled to avoid a judgment lien a creditor placed on the property six months before the debtor and her husband were divorced and her husband transferred his interest to the debtor. The creditor obtained a judgment against the debtor's former husband after he failed to repay a debt, this section created a presumption that the property was community property at the time the creditor filed its lien, the lien attached to the debtor's community property interest, and the lien impaired the debtor's homestead exemption. In re Ashcraft, 415 B.R. 428 (Bankr. D. Idaho 2008).

Property acquired during a marriage is presumed to be community property. The presumption can be overcome if the party asserting the separate character of the property carries his burden of proving, with reasonable certainty and particularity, that the property acquired during marriage is separate property. Kraly v. Kraly, 147 Idaho 299, 208 P.3d 281 (2009).

Property Acquired From Proceeds of Separate Property.

Where evidence supported husband's contention that the entire purchase price of an acquired property was paid with his separate funds from the sale of his pre-marital separate home in Florida and the trial court did not find that husband gifted any part of the property to wife, the court properly held that the property was husband's separate property. Kraly v. Kraly, 147 Idaho 299, 208 P.3d 281 (2009).

Retirement Benefits.

Amount in a wife's retirement account at the time of marriage was her separate property; however, the husband's retirement account, though valued less than it was at the time of the marriage, was properly characterized as community property, as he had commingled both separate and community funds in it and he had transferred money out of it to fund his business ventures. Baruch v. Clark, 154 Idaho 732, 302 P.3d 357 (2013).

OPINIONS OF ATTORNEY GENERAL

This section and §§ 32-910, 32-911, and 32-912 suggest that one spouse can obligate the community property of the marital estate and make that property available to a creditor desiring to execute on that property in the event of loan default, in the case of an unsecured loan incurred without the signature of the other spouse to the promissory note or loan obligation. Cases construing these statutes, however, attach significant qualifications to this conclusion. OAG 05-1.

RESEARCH REFERENCES

A.L.R. — Divorce and separation: Health insurance benefits as marital asset. 81 A.L.R.6th 655.

32-904. Separate property of wife — Management.

JUDICIAL DECISIONS

Life Insurance.

Because spouses have independent control over their own separate property, if a term life insurance policy is a husband's separate property, he can designate a new beneficiary without his wife's consent, and that beneficiary is entitled to the policy proceeds upon his demise. Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 206 P.3d 481 (2009).

32-906. Community property — Income from separate and community property — Conveyance between spouses.

JUDICIAL DECISIONS

ANALYSIS

Bankruptcy.
Community interest in tort action.
Conveyance to spouse.
Determination of community property.
Income from separate property.
Income tax.
Retirement benefits.

Bankruptcy.

Debtor's motion seeking turnover of prorated portion of her federal tax refund was denied. Because the refund was community property subject to equal management by either spouse, all of the prorated tax refund constituted property of the debtor's bankruptcy estate and was available to satisfy creditors' claims incurred by the debtor before her marriage. In re Martell, 349 B.R. 233 (Bankr. D. Idaho 2005).

Because a debtor and his wife purchased a vehicle during their marriage, it was presumed to be community property under this section, and they did not rebut this presumption by testifying that the vehicle was purchased with funds from the wife's separate bank account. A Chapter 7 trustee could avoid a transfer of the vehicle from debtor to his wife, as constructively fraudulent under 11 U.S.C.S. § 548(a)(1)(B), § 55-914(1), and § 55-913(1)(b), as the transfer occurred within the applicable reach back period, the debtor was insolvent at the time, and he transferred the vehicle for less than reasonably equivalent value. Rainsdon v. Kirtland (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Community Interest in Tort Action.

Although a claimant's cause of action was abated by his death because he did not have a surviving spouse, the appellate court did not dismiss the appeal, because the trial court had improperly dismissed the case and the personal representative should be given the opportunity to file an amended complaint for wrongful death without having to file a new lawsuit. Steele v. Kootenai Med. Ctr., 142 Idaho 919, 136 P.3d 905 (2006).

Conveyance to Spouse.

Where a debtor and his wife purchased a motorcycle prior to their marriage, it was not community property under this section; so when the debtor transferred his interest in the motorcycle to his wife after their marriage, it was her separate property from that time forward under § 32-903. Because the motorcycle became her separate property at that time, the debtor did not transfer an interest in the motorcycle to his wife within the applicable reach back period in 11 U.S.C.S. § 548(a) or in the four-year period provided in § 55-918, as applicable to the fraudulent transfer provisions in §§ 55-913(1)(a), (1)(b) and 55-914(a). Rainsdon v. Kirtland (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Determination of Community Property.

Risk payment theory is the appropriate method for determining the character of term life insurance policy proceeds. Although the policy proceeds are presumptively community property where the policy is acquired during the marriage, the presumption can be overcome by a showing that the last premium was paid with the insured's separate property. Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 206 P.3d 481 (2009).

Income From Separate Property.

Income earned from separate property during the marriage, where community labor was expended on the development of that separate venture, is community income, where there is no evience that the community was otherwise adequately compensated for its labor. Baruch v. Clark, 154 Idaho 732, 302 P.3d 357 (2013).

Income Tax.

Just as in computing federal taxable income, one-half of the husband's earnings were included in determining the wife's gross income; there was nothing in the Constitution to prevent the state from taxing the wife's income, regardless of the fact that the income was derived from a source outside of the state. Parker v. Idaho State Tax Comm'n, 148 Idaho 842, 230 P.3d 734 (2010).

Retirement Benefits.

Amount in a wife's retirement account at the time of marriage was her separate property; however, the husband's retirement account, though valued less than it was at the

time of the marriage, was properly characterized as community property, as he had commingled both separate and community funds in it and he had transferred money out of it to fund his business ventures. Baruch v. Clark, 154 Idaho 732, 302 P.3d 357 (2013).

Cited in: In re Cluff, 2012 Bankr. LEXIS 1123 (Bankr. D. Idaho Mar. 16, 2012).

RESEARCH REFERENCES

A.L.R. — Divorce and separation: Health insurance benefits as marital asset. 81 A.L.R.6th 655.

32-910. Liability for antenuptial debts.

OPINIONS OF ATTORNEY GENERAL

This section and §§ 32-903, 32-911, and 32-912 suggest that one spouse can obligate the community property of the marital estate and make that property available to a creditor desiring to execute on that property in the event of loan default, in the case of an unsecured loan incurred without the signature of the other spouse to the promissory note or loan obligation. Cases construing these statutes, however, attach significant qualifications to this conclusion. OAG 05-1.

32-911. Wife's liability for personal debts.

OPINIONS OF ATTORNEY GENERAL

This section and §§ 32-903, 32-910, and 32-912 suggest that one spouse can obligate the community property of the marital estate and make that property available to a creditor desiring to execute on that property in the event of loan default, in the case of an unsecured loan incurred without the signature of the other spouse to the promissory note or loan obligation. Cases construing these statutes, however, attach significant qualifications to this conclusion. OAG 05-1.

32-912. Control of community property.

JUDICIAL DECISIONS

ANALYSIS

Bankruptcy.
Liability.
—Separate debts.
Medicaid recovery.
Purpose.

Bankruptcy.

Debtor's motion seeking turnover of prorated portion of her federal tax refund was denied. Because the refund was community property subject to equal management by either spouse, all of the prorated tax refund constituted property of the debtor's bankruptcy estate and was available to satisfy creditors' claims incurred by the debtor before her marriage. In re Martell, 349 B.R. 233 (Bankr. D. Idaho 2005).

Chapter 7 debtor who claimed a homestead exemption in real property she owned in Idaho was entitled to avoid a judgment lien a creditor placed on the property six months before the debtor and her husband were divorced and her husband transferred his interest to the debtor. The creditor obtained a judgment against the debtor's former husband after he failed to repay a debt, § 32-903 created a presumption that the property was community property at the time the creditor filed its lien, the lien attached to the debtor's community property interest, and the lien

impaired the debtor's homestead exemption. In re Ashcraft, 415 B.R. 428 (Bankr. D. Idaho 2008).

Because a debtor and his wife purchased a vehicle during their marriage, it was presumed to be community property under § 32-906, and they did not rebut this presumption by testifying that the vehicle was purchased with funds from the wife's separate bank account. A Chapter 7 trustee could avoid a transfer of the vehicle from debtor to his wife, as constructively fraudulent under 11 U.S.C.S. § 548(a)(1)(B) and §§ 55-913(1)(b) and 55-914(1), as the transfer occurred within the applicable reach back period, the debtor was insolvent at the time, and he transferred the vehicle for less than reasonably equivalent value. Rainsdon v. Kirtland (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Liability.

—Separate Debts.

Separate debts of either spouse may be paid from community property. The debt does not need to be incurred for the benefit of the community in order for the community to be liable. Credit Bureau of E. Idaho, Inc. v. Lecheminant, 149 Idaho 468, 235 P.3d 1188 (2010).

Medicaid Recovery.

Section 56-218 and federal law permit the department of health and welfare to recover medical payments, paid on behalf of now deceased wife, from deceased husband's estate, based on assets that had once been wife's community property, but had been transmuted into husband's separate property for the purpose of making wife eligible for Medicaid. State v. Wiggins (In re Estate of Wiggins), — Idaho —, 306 P.3d 201 (2013).

Purpose.

This section is only properly used as a shield by a non-signing spouse to protect an interest in community real property — not as a sword by a third party to defeat an earlier recorded encumbrance. The benefit of this section is only intended to flow to the non-signing spouse for the protection of his or her interest in community real property, and it is only the non-signing spouse who may ask a court to declare an attempted transfer void. New Phase Invs., LLC v. Jarvis, 153 Idaho 207, 280 P.3d 710 (2012).

OPINIONS OF ATTORNEY GENERAL

This section and §§ 32-903, 32-910, and 32-911 suggest that one spouse can obligate the community property of the marital estate and make that property available to a creditor desiring to execute on that property in the event of loan default, in the case of an unsecured loan incurred without the signature of the other spouse to the promissory note or loan obligation, Cases construing these statutes, however, attach significant qualifications to this conclusion. OAG 05-1.

Absent collusion between the creditor and a spouse who is the sole signer on a promissory note, the non-obligated spouse's signature on a deed of trust or mortgage should be sufficient to make the real property available to satisfy a secured loan in the event of default. OAG 05-1.

RESEARCH REFERENCES

A.L.R. — Validity of postnuptial agreements in contemplation of divorce. 77 A.L.R.6th 293.

32-916. Property rights governed by chapter.

JUDICIAL DECISIONS

Intent of Parties.

Where divorcing spouses entered into a stipulated divorce decree dividing equally community real estate, this action, without more, did not show that the property had been transmuted into separate interests prior to the husband filing for bankruptcy. Hopkins v. Idaho State Univ. Credit Union (In re Herter), 456 B.R. 455 (Bankr. D. Idaho 2011).

Cited in: New Phase Invs., LLC v. Jarvis, 153 Idaho 207, 280 P.3d 710 (2012).

32-917. Formalities required of marriage settlements.

JUDICIAL DECISIONS

Noncompliance with Statute.

Magistrate's refusal to consider evidence of parties' partial performance of their alleged oral prenuptial agreement to keep their property separate was affirmed. This section requires that all contracts for marriage settlements, including prenuptial agreements, must be in writing and executed and acknowledged or proved. Dunagan v. Dunagan, 147 Idaho 599, 213 P.3d 384 (2009).

Cited in: Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

CHAPTER 10

PARENT AND CHILD

SECTION.

32-1002. Reciprocal duties of support. [Repealed.]

Repealed by S.L. 2011, ch. 149, § 1, effective July 1, 2011.

History.

R.S., § 2531; am. 1897, p. 52, § 1; reen. 1899, p. 301, § 1; reen. R.C. & C.L., § 2695; C.S., § 4676; I.C.A., § 31-1002; am. 1988, ch. 268, § 1, p. 885.

32-1007. Rights of parents over children.

JUDICIAL DECISIONS

ANALYSIS

Child's Interest Controlling.

After the husband pleaded guilty to domestic battery, his wife left Idaho and fled to Oregon with their minor child. Magistrate court abused its discretion by ordering the wife to return with their child to Boise or surrender child custody. It was error for the magistrate court to fail to make findings on the wife's argument that the husband's habitual domestic violence overcame the presumption that joint custody was in the child's best interest. Schultz v. Schultz, 145 Idaho 859, 187 P.3d 1234 (2008).

Exclusive Set of Conditions for Award.

This section does not establish an exclusive set of conditions for awarding one parent sole physical custody. Danti v. Danti, 146 Idaho 929, 204 P.3d 1140 (2009).

Greater Relationship.

Trial court erred in disregarding the presumption for joint custody and determining that mother's greater relationship with child indicated that giving her sole legal and physical custody would be in the child's best interests, where her greater relationship was primarily due to her illegal actions of absconding with the child to another state and obtaining a false domestic violence protection order there. Hopper v. Hopper, 144 Idaho 624, 167 P.3d 761 (2007).

32-1008A. Responsibility of relatives to participate in the cost of nursing home care. [Repealed.]

Repealed by S.L. 2011, ch. 149, § 1, effective July 1, 2011.

History.
I.C., § 32-1008A, as added by 1983, ch. 198, § 1, p. 537.

CHAPTER 11

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Part 1. General Provisions

32-11-102. Definitions.

RESEARCH REFERENCES

A.L.R. — Construction and application of uniform child custody jurisdiction and enforcement act's home state jurisdiction provision. 57 A.L.R.6th 163.

32-11-104. Application to Indian tribes.

RESEARCH REFERENCES

A.L.R. — Construction and application by state courts of Indian Child Welfare Act of 1978 requirement of active efforts to provide remedial services, 25 U.S.C.A. § 1912(d). 61 A.L.R.6th 521.

Validity, construction, and application of placement preferences of state and federal Indian Child Welfare acts. 63 A.L.R.6th 429.

32-11-105. International application of chapter.

RESEARCH REFERENCES

A.L.R. — Applicability and application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to international child custody and support actions. 66 A.L.R.6th 269.

Part 2. Jurisdiction

32-11-201. Initial child custody jurisdiction.

RESEARCH REFERENCES

Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

A.L.R. — Construction and application of uniform child custody jurisdiction and enforcement act's significant connection jurisdiction provision. 52 A.L.R.6th 433.

Construction and application of uniform child custody jurisdiction and enforcement act's home state jurisdiction provision. 57 A.L.R.6th 163.

Construction and application of uniform child custody jurisdiction and enforcement act's exclusive, continuing jurisdiction provision — No significant connection/substantial

evidence. 59 A.L.R.6th 161.

Construction and application of uniform child custody jurisdiction and enforcement act's exclusive, continuing jurisdiction provision — Other than no significant connection/substantial evidence. 60 A.L.R.6th 193.

32-11-202. Exclusive, continuing jurisdiction.

RESEARCH REFERENCES

A.L.R. — Construction and application of uniform child custody jurisdiction and enforcement act's significant connection jurisdiction provision. 52 A.L.R.6th 433.

Construction and application of uniform child custody jurisdiction and enforcement act's exclusive, continuing jurisdiction provision — No significant connection/substantial evidence. 59 A.L.R.6th 161.

Construction and application of uniform child custody jurisdiction and enforcement act's exclusive, continuing jurisdiction provision — Other than no significant connection/substantial evidence. 60 A.L.R.6th 193.

32-11-203. Jurisdiction to modify determination.

RESEARCH REFERENCES

A.L.R. — Construction and application of uniform child custody jurisdiction and enforcement act's significant connection jurisdiction provision. 52 A.L.R.6th 433.

32-11-204. Temporary emergency jurisdiction.

RESEARCH REFERENCES

A.L.R. — Construction and application of uniform child custody jurisdiction and enforcement act's temporary emergency jurisdiction provision. 53 A.L.R.6th 419.

32-11-208. Jurisdiction declined by reason of conduct.

RESEARCH REFERENCES

A.L.R. — Construction and application of uniform child custody jurisdiction and enforcement act's home state jurisdiction provision. 57 A.L.R.6th 163.

CHAPTER 12

MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT

32-1206. Judicial proceedings for income withholding. — (1) A proceeding to enforce a duty of support is commenced:

(a) By filing a petition or complaint for an original action; or

(b) By motion in an existing action or under an existing case number.

(2) Venue for the action is in the district court of the county where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the state, or any agency providing care or support to the dependent child.

(3) A filing fee shall not be assessed in cases brought on behalf of the state of Idaho.

(4) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to section 32-1204 or 32-1205, Idaho Code, and:

(a) The name, address, and social security number of the obligor;

(b) A copy of the support order;

(c) The name and address of the obligor's employer;

(d) The amount of any delinquency; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(5) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to section 32-1204 or 32-1205, Idaho Code, to the employer utilizing the required income withholding for support form and shall provide a form for an answer to the income withholding order which shall be returned to the court within ten (10) days. The court shall also order the employer to remit the amount withheld to the department of health and welfare within seven (7) business days after the date the amount would have been paid or credited to the obligor. The department shall supply each county with the required income withholding for support form and answers that comply with the rules promulgated by the department, and which include:

(a) The maximum amount of current support, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement;

(b) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any; and

(c) The amount of arrearage payments specified in the support order, if any.

(6) If the petition or motion indicates the obligee has received public assistance from any source on behalf of a minor child, the clerk shall immediately forward a copy of the petition or the motion to the department.

(7) The court retains continuing jurisdiction under this chapter until all duties of support of the obligor, including any delinquency, have been satisfied or until the order is otherwise unenforceable.

History.

I.C., § 32-1206, as added by 1986, ch. 222, § 1, p. 593; am. 1993, ch. 335, § 3, p. 1244; am. 1998, ch. 292, § 10, p. 928; am. 2013, ch. 248, § 1, p. 598.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 248, in subsection (5), inserted "utilizing the required income withholding for support form" in the first sentence, substituted "department of health and welfare" for "person or entity des-

ignated in the income withholding order" in the second sentence, and substituted "the required income withholding for support form" for "forms for income withholding orders" in the third sentence.

32-1210. Employer's duties and responsibilities — Fee for employer. — (1) Upon receiving an income withholding order from the court, the employer shall answer the income withholding order on forms supplied with the income withholding order within ten (10) days after the date of service. The employer shall deliver the original answer to the court, and shall mail one (1) copy to the obligee or obligee's attorney, and shall deliver one (1) copy to the obligor as soon as is reasonably possible. The answer shall state whether the obligor is employed by or receives income from the employer, whether the employer will honor the income withholding order, and whether there are multiple child support income withholding orders or garnishments against the obligor. Upon receiving an income withholding order from the department, the employer shall begin income withholding pursuant to this section.

(2) If the employer possesses any income due and owing to the obligor, the income subject to the income withholding order shall be withheld immediately upon receipt of the income withholding order. The withheld income shall be delivered to the department of health and welfare within seven (7) business days after the date the amount would have been paid or credited to the employee.

(3) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed fifty percent (50%) of the disposable earnings of the obligor. If the amounts to be paid toward the arrearage are specified in the support order, then the maximum amount to be withheld is the sum of the current support ordered and the amount ordered to be paid toward the arrearage, or fifty percent (50%) of the disposable earnings of the obligor, whichever is less. In no event shall the amount to be withheld from the earnings of the obligor exceed the amount specified in section 11-207, Idaho Code.

(4) When an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

(a) The employer's fee for processing an income withholding order;

(b) The maximum amount permitted to be withheld from the obligor's income;

(c) The time periods within which the employer must implement the income withholding order and forward the child support payment;

(d) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(e) Any withholding terms or conditions not specified in the income withholding order.

(5) If an obligor is subject to two (2) or more income withholding orders for child support on behalf of more than one (1) obligee, the employer shall send the entire amount withheld from that obligor to the department. If the department is providing child support services, the employer shall send the department a copy of each income withholding order under which the

obligor owes a support obligation. The department shall apportion the amount of income withheld between all obligees of the obligor as follows: the support obligation for the current month shall be paid first. If the amount of nonexempt disposable income withheld is not sufficient to pay the total support obligation for the current month for each obligee for whom there is an income withholding order, the amount withheld shall be divided between each obligee for whom there is an income withholding order on a pro rata basis. If the amount of the nonexempt disposable earnings withheld is in excess of the total support obligation for the current month for each obligee for whom there is an income withholding order, the excess shall be divided between each obligee for whom there is an income withholding order which includes withholding for any delinquency on a pro rata basis unless otherwise ordered by a court.

(6) The employer shall continue to withhold the ordered amounts from nonexempt income of the obligor until notified by the court or the department that the income withholding order has been modified or terminated. The employer shall promptly notify the court or the department when the employee is no longer employed, and of the employee's last known address, and the name and address of his new employer, if known.

(7) The employer may deduct a processing fee, not to exceed five dollars ($5.00), to cover the costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount withheld to satisfy the withholding order, but the total amount withheld, including the fee, shall not exceed fifty percent (50%) of the obligor's disposable income.

(8) The employer may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated.

(9) An order for income withholding for support entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment, income withholding order, or garnishment for child support.

History.

I.C., § 32-1210, as added by 1986, ch. 222, § 1, p. 593; am. 1995, ch. 201, § 2, p. 693; am. 1998, ch. 292, § 14, p. 928; am. 2013, ch. 248, § 2, p. 598.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 248, substituted "department of health and welfare" for "person or entity designated in the income withholding order" in the last sentence of subsection (2); and, in subsection (5), substituted "shall send" for "may send" and deleted "the clerk of the court or, if the department is providing child support services on behalf of either obligee, to" preceding "the department" in the first sentence and deleted "clerk of the court or the" following "The" at the beginning of the third sentence.

32-1214A. Purpose. — The state of Idaho has an interest in ensuring that its children receive health insurance benefits through private means when available at reasonable cost as defined in section 32-1214B, Idaho Code. Therefore, the legislature hereby adopts the national medical support

notice required by 42 U.S.C. section 666(a)(19) and the employee retirement income security act, 29 U.S.C. section 1169(a), to allow the department of health and welfare or an obligee to enforce an order for medical support.

History.
I.C., § 32-1214A, as added by 2003, ch. 304, § 2, p. 833; am. 2008, ch. 328, § 2, p. 900.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 328, added "at reasonable cost as defined in section 32-1214B, Idaho Code" at the end of the first sentence.

32-1214B. Definitions. — For the purposes of this chapter, the following definitions apply:

(1) "Child" means any child including an adopted minor child, of a participant in a health benefit plan, recognized under a medical child support order as having a right to enrollment under a health benefit plan.

(2) "Department" means the department of health and welfare.

(3) "Health benefit plan" means a group or individual health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child.

(4) "Insurer" means every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or annuity.

(5) "Medical child support order" means any order, including those that meet the requirements of 29 U.S.C. section 1169, or notice issued by either a court or administrative agency that requires a plan administrator, or if none, the employer, to enroll an eligible child in a health benefit plan.

(6) "Obligee" means a party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child.

(7) "Obligor" means the parent ordered by the court to carry or provide health insurance benefits for the parties' minor child.

(8) "Party" means the department, grandparent or any person who is the custodian, other than the parent who owes a duty of medical support.

(9) "Plan administrator" means a person or entity, designated under the terms of the health benefit plan or health insurance policy or related contract or agreement, responsible for the administration of plan duties. If no plan administrator is designated under the terms of the policy, contract or agreement, the plan administrator is the plan sponsor.

(10) "Plan sponsor" means an employer, employee organization, association, committee, joint board of trustees, or other similar group, including a state or local government agency or church, that establishes or maintains an employee benefit plan.

(11) "Reasonable cost" means the cost to the obligor does not exceed five percent (5%) of his or her gross income.

History.
I.C., § 32-1214B, as added by 2003, ch. 304, § 3, p. 833; am. 2005, ch. 101, § 1, p. 320; am. 2008, ch. 328, § 3, p. 900.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 328, added subsection (11).

32-1215. Termination of income withholding upon obligor's request. — (1) An obligor whose income is subject to withholding under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee in the time and in the manner provided by the Idaho rules of civil procedure.

(2) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(3) If an income withholding order has been in operation for twelve (12) consecutive months and the obligor's support obligation is current, the court may terminate the order upon motion of the obligor, unless the obligee can show good cause as to why the income withholding order should remain in effect.

(4) No order to quash, modify, or terminate an income withholding order shall be issued unless the obligor provides proof to the court that the obligee has been served with a copy of the motion and notice for hearing in the time and in the manner provided by the Idaho rules of civil procedure, or that service is impossible because the obligee has moved and failed to provide the court with a current address, as required by section 32-1212, Idaho Code.

History.
I.C., § 32-1215, as added by 1998, ch. 292, § 19, p. 928; am. 2007, ch. 2, § 1, p. 3; am. 2011, ch. 33, § 1, p. 76.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 2, deleted "upon a delinquency" following "An obligor whose income is subject to withholding" in subsection (1).

The 2011 amendment, by ch. 33, substituted "in the time and in the manner provided by" for "at least five (5) days before the date set for the hearing, by personal service or certified mail, pursuant to" in the last sentence of subsection (1) and substituted "in the time and in the manner provided by the Idaho rules of civil procedure" for "five (5) days prior to the hearing" in subsection (4).

32-1217. Termination of income withholding by the court in a judicial proceeding. — If the department is unable to deliver payments under the income withholding order for a period of three (3) months due to the failure of the obligee to notify the department of a change of address, the court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The court shall return all undeliverable payments to the obligor.

History.
I.C., § 32-1217, as added by 1998, ch. 292, § 21, p. 928; am. 2007, ch. 2, § 2, p. 3.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 2, substituted "department" for "clerk" twice in the first sentence.

CHAPTER 13
PARENT RESPONSIBILITY ACT

SECTION.

32-1301. Cities and counties may enact and enforce ordinances for failure to supervise a child. — (1) Any county or city may by ordinance establish and enforce the offense of failure to supervise a child as provided in this section.

(2) The ordinance may provide that a person who is the parent, lawful guardian with legal and physical custody or other person, except a foster parent, lawfully charged with the care or custody of a child under sixteen (16) years of age commits the offense of failure to supervise a child if the child:

(a) Commits an act bringing the child within the purview of the juvenile corrections act, chapter 5, title 20, Idaho Code, or commits a crime for which the child is required to be tried as an adult, or for which jurisdiction under the juvenile corrections act is subject to waiver pursuant to chapter 5, title 20, Idaho Code; or

(b) Fails to attend school or is not comparably instructed, as provided in section 33-202, Idaho Code; or

(c) Violates a curfew law of the county or city enacting the ordinance authorized under this section.

(3)(a) A person shall not be subject to prosecution under an ordinance containing the provisions of subsection (2)(a) of this section if the person:

(i) Is the victim of the act bringing the child within the purview of the provisions of chapter 5, title 20, Idaho Code; or

(ii) Reported the act of the child to the local law enforcement agency, the juvenile court, the department of health and welfare or other appropriate authority as provided in the ordinance;

(b) A person shall not be subject to prosecution under an ordinance containing the provisions of subsection (2)(a), (b) or (c) of this section if the person shows to the satisfaction of the court that the person took reasonable steps to control the conduct of the child at the time the person is alleged to have failed to supervise the child.

(4) Except as provided in subsection (5) of this section, the ordinance may provide that in a prosecution for failure to supervise a child the court may order the person to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the

standards and requirements of sections 19-5304 and 19-5305, Idaho Code, provided that the restitution ordered to be paid shall not exceed twenty-five hundred dollars ($2,500).

(5) The ordinance may provide that when a child commits any of the acts set forth in subsection (2) of this section, the parent, lawful guardian with legal and physical custody or other person lawfully charged with the care or custody of the child may be charged, by citation or summons, with the offense of failure to supervise a child, unless the person with lawful custody is a foster parent. Upon a first offense, the officer may serve a copy of the ordinance upon the parent, lawful guardian with legal and physical custody or other person, other than a foster parent, as a warning of the penalties. This service shall be documented by the officer.

(6) An ordinance enacted pursuant to this section shall provide that if a person is found guilty or pleads guilty to the offense of failure to supervise a child, the person shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars ($1,000). The ordinance may provide that, in lieu of imposing a fine, the court, with the consent of the person, may order the person to complete parenting classes or undertake other treatment or counseling, as approved by the court, and upon the person's completion of the classes, treatment or counseling to the satisfaction of the court, the court may discharge the person or if the person fails to complete the program to the satisfaction of the court, the court may impose the penalty provided in this section. The ordinance may provide that any person violating the orders of the court entered under the ordinance shall be subject to contempt proceedings in accordance with chapter 6, title 7, Idaho Code, in addition to any other penalties authorized pursuant to this section.

(7) The ordinance may provide that the juvenile court has jurisdiction over a first offense of failing to supervise a child and that any subsequent offense shall be subject to the jurisdiction of the magistrate's division of the district court, or may provide that any offense of failing to supervise the child shall be subject to the jurisdiction of the juvenile court or to the jurisdiction of the magistrate's division of the district court.

(8) Conviction of a person under an ordinance enacted under the authority of this section shall not preclude any other action or proceedings against the person which may be undertaken pursuant to the provisions of chapter 5, title 20, Idaho Code, or other provisions of law.

History.
I.C., § 32-1301, as added by 1996, ch. 359, § 1, p. 1207; am. 1997, ch. 264, § 1, p. 753; am. 2012, ch. 257, § 8, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, inserted "with legal and physical custody" following "lawful guardian" in the introductory paragraph in subsection (2) and twice in subsection (5).

JUDICIAL DECISIONS

Curfew Ordinance.
Where defendant minor was cited for violating Wendell City, Idaho, Ordinance No. 442, a curfew ordinance which prohibited a

minor from being in public from 11:00 p.m. till 5:00 a.m., the supreme court held that the ordinance was a reasonable time, place, and manner restriction with only an incidental effect on First Amendment freedoms; the ordinance was a valid enactment within the city's power under this section, served the government's interest in keeping juveniles off the streets, and did not reach an amount of conduct that was greater than necessary to further the city's interests in the physical well-being of minors. State v. Doe, 148 Idaho 919, 231 P.3d 1016 (2010).

CHAPTER 14

COORDINATED FAMILY SERVICES

32-1402. Declaration of purpose. — The legislature declares that an effective response to address the needs of families and children in resolving these disputes would include the following:

(1) Case management practices that provide a flexible response to the diverse court-related needs of families involved in multiple court cases which will promote the efficient use of time and resources of the parties and the court, and avoid conflicting court orders;

(2) The expansion of available nonadversarial methods of dispute resolution, including mediation of child custody and visitation disputes and alternative dispute resolution assessments;

(3) Coordination of family dispute issues with related litigation involving the juvenile correction laws and criminal laws;

(4) A family court services coordinator to assist families in need to connect with appropriate resources for the family, to provide assessment information to the court to assist in early case resolution, and to conduct workshops which will educate the parties on the adverse impact of high conflict family disputes upon children, identify the developmental needs of children, and emphasize the importance of parenting plans and mediation techniques which peacefully resolve child custody and visitation issues;

(5) A court assistance officer to provide assistance to parties without legal representation to help them understand the legal requirements of the court system, including educational materials, court forms, assistance in completing court forms, information about court procedures, and referrals to public and community agencies and resources that provide legal and other services to parents and children;

(6) A domestic violence court coordinator to assist in the effective operation of a domestic violence court and to serve victims and families involved in domestic violence court proceedings;

(7) Supervised visitation by trained providers to assure the safety and welfare of children in cases where certain risk factors are identified; and

(8) The adoption of other methods and procedures which will promote a timely and effective resolution of related disputes in court cases involving children and families.

History.
I.C., § 32-1402, as added by 2001, ch. 338, § 1, p. 1199; am. 2009, ch. 79, § 1, p. 218.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 79, added subsection (6) and redesignated the subsequent subsections accordingly.

32-1407. Court services coordinators — Record checks. — Prior to appointment, and at his or her own cost, a family court services coordinator or a domestic violence court coordinator shall submit to a fingerprint-based criminal history check through any law enforcement office in the state providing such a service. The criminal history check shall include a statewide criminal identification bureau check, federal bureau of investigation criminal history check, child abuse registry check, adult protection registry check and statewide sex offender registry check. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho.

History.
I.C., § 32-1407, as added by 2007, ch. 25, § 1, p. 48; am. 2009, ch. 79, § 2, p. 218.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 79, in the section catchline, deleted "family" from the beginning; and, in the first sentence, inserted "or a domestic violence court coordinator."

32-1408. Domestic violence courts — Statement of policy. — The legislature finds that:

(1) Domestic violence is a serious crime that causes substantial damage to victims and children, as well as to the community. Families experiencing domestic violence are often involved in more than one (1) court proceeding including divorce and custody cases, as well as civil and criminal proceedings regarding domestic violence, substance abuse and child protection. Substantial state and county resources are required each year for the incarceration, supervision and treatment of batterers.

(2) Domestic violence courts hold offenders accountable, increase victim safety, provide greater judicial monitoring and coordinate information to provide effective interaction and use of resources among the courts, justice system personnel and community agencies. Effective case management and coordination ensure that decisions in one (1) case do not conflict with existing orders in other civil and criminal cases and provide courts with the necessary information to protect victims and families.

(3) Domestic violence courts have proven effective in reducing recidivism and increasing victim safety. It is in the best interests of the citizens of this state to expand domestic violence courts to each judicial district.

History.
I.C., § 32-1408, as added by 2009, ch. 79, § 3, p. 218.

RESEARCH REFERENCES

Idaho Law Review. — The Efficacy of Idaho's Domestic Violence Courts: An Opportunity for the Court System to Effect Social Change, Comment. 48 Idaho L. Rev. 587 (2012).

32-1409. Domestic violence courts. — (1) The district court in each county may establish a domestic violence court in accordance with the policies and procedures adopted by the supreme court based upon recommendations by the committee as authorized pursuant to section 32-1403, Idaho Code.

(2) The committee shall recommend policies and procedures for domestic violence courts addressing eligibility, identification and screening, assessment, treatment and treatment providers, case management and supervision, judicial monitoring, supervision of progress and evaluation. The committee shall also solicit specific domestic violence court plans from each judicial district, recommend funding priorities for each judicial district and provide training to ensure the effective operation of domestic violence courts.

(3) No person has a right to be admitted into a domestic violence court.

History.
I.C., § 32-1409, as added by 2009, ch. 79, § 4, p. 218.

32-1410. Domestic violence court fees. — (1) Each person who is found guilty of or pleads guilty to any of the following alcohol, substance abuse or domestic violence related offenses shall pay a thirty dollar ($30.00) fee to be deposited in the statewide drug court, mental health court and family court services fund, as provided in section 1-1625, Idaho Code, to assist in funding the domestic violence courts:

(a) Section 18-918, Idaho Code (domestic violence);

(b) Section 18-920, Idaho Code (violation of no contact order);

(c) Section 18-923, Idaho Code (attempted strangulation);

(d) Section 18-1502, Idaho Code (beer, wine or other alcohol age violations);

(e) Section 18-2510(3), Idaho Code (introduce, convey, possess, receive, obtain or remove major contraband, except major contraband as defined in section 18-2510(5)(c)(ii), (iv) and (v), Idaho Code);

(f) Section 18-4006 3.(b), Idaho Code (vehicular manslaughter in the commission of a violation of section 18-8004 or 18-8006, Idaho Code);

(g) Section 18-5414, Idaho Code (intentionally making false statements);

(h) Section 18-8004, Idaho Code (persons under the influence of alcohol, drugs or any other intoxicating substances);

(i) Section 18-8006, Idaho Code (aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances);

(j) Section 23-312, Idaho Code (persons under twenty-one and intoxicated persons — inhibited sales);
(k) Section 23-505, Idaho Code (transportation of alcoholic beverages);
(*l*) Section 23-602, Idaho Code (unlawful manufacture, traffic in, transportation and possession of alcohol beverage);
(m) Section 23-603, Idaho Code (dispensing to minor);
(n) Section 23-604, Idaho Code (minors — purchase, consumption or possession prohibited);
(o) Section 23-605, Idaho Code (dispensing to drunk);
(p) Section 23-612, Idaho Code (beer, wine or other alcoholic beverages on public school grounds);
(q) Section 23-615, Idaho Code (restrictions on sale);
(r) Section 23-949, Idaho Code (persons not allowed to purchase, possess, serve, dispense or consume beer, wine or other alcoholic liquor);
(s) Section 23-1013, Idaho Code (restrictions concerning age);
(t) Section 23-1024, Idaho Code (false representation as being twenty-one or more years of age a misdemeanor);
(u) Section 23-1333, Idaho Code (open or unsealed containers of wine in motor vehicles on highways prohibited);
(v) Section 23-1334, Idaho Code (minors — authorization to deliver);
(w) Criminal violation of any of the provisions of chapter 27, title 37, Idaho Code;
(x) Section 39-6312, Idaho Code (violation of order — penalties);
(y) Section 67-7034, Idaho Code (persons under the influence of alcohol, drugs or any other intoxicating substances); and
(z) Section 67-7114, Idaho Code (operation under the influence of alcohol, drugs or any other intoxicating substance).

(2) The clerk of the district court shall collect the fees set forth in subsection (1) of this section. The fees shall be paid over to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the drug court, mental health court and family court services fund.

History.
I.C., § 32-1410, as added by 2009, ch. 79, § 5, p. 218; am. 2012, ch. 82, § 4, p. 234.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 82, substituted current paragraph (1)(e) for the former paragraph which read: "Section 18-2511, Idaho Code (possession of a controlled substance or dangerous weapon)".

Compiler's Notes.
The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.
Section 5 of S.L. 2012, ch. 82 declared an emergency. Approved March 20, 2012.

JUDICIAL DECISIONS

Cited in: State v. Steelsmith, 153 Idaho 577, 288 P.3d 132 (Ct. App. 2012).

CHAPTER 17
DE FACTO CUSTODIAN ACT

SECTION.

32-1701. Short title. — This chapter may be known and cited as the "De Facto Custodian Act."

History.
I.C., § 32-1701, as added by 2010, ch. 236, § 1, p. 609.

32-1702. Purpose. — The purpose of this act is to:

(1) Give constitutionally required deference to the decisions of fit parents in custody actions brought by third parties;

(2) Subject to such constitutionally required deference, meet the needs of children for caring and stable homes by providing a flexible method by which a third party who has cared for and supported a child may obtain legal and physical custody of the child where such custody is in the child's best interests.

History.
I.C., § 32-1702, as added by 2010, ch. 236, § 1, p. 609.

32-1703. De facto custodians. — (1) "De facto custodian" means an individual who:

(a) Is related to a child within the third degree of consanguinity; and

(b) Either individually or together with a copetitioner has been the primary caretaker and primary financial supporter of such child has resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of:

(i) Six (6) months or more if the child is under three (3) years of age; or

(ii) One (1) year or more if the child is three (3) years of age or older.

(c) For purposes of the definition in this section, "lack of demonstrated consistent participation" by a parent means refusal or failure to comply with the duties imposed upon the parent by the parent-child relationship. When determining a "lack of demonstrated consistent participation," the court may consider parent involvement in providing the child necessary food, clothing, shelter, health care and education and in creating a nurturing and consistent relationship for the child's physical, mental or emotional health and development.

(2) In determining if a petitioner or intervenor is a de facto custodian for the child, the court shall also take into consideration whether the child is currently residing with the petitioner or intervenor and, if not, the length of time since the child resided with the petitioner or intervenor.

(3) Any period of time after the filing of a petition pursuant to this chapter shall not be included in determining whether the child has resided with the individual for the time period as provided in subsection (1) of this section.

(4) An individual shall not be deemed a de facto custodian if a child has resided with the individual because:

(a) The child was placed in the individual's care through a court order or voluntary placement agreement under title 16, Idaho Code; or

(b) The individual is or was cohabiting with, or is or was married to, a parent of the child.

History.
I.C., § 32-1703, as added by 2010, ch. 236, § 1, p. 609.

32-1704. Commencement of proceedings. — (1) A child custody proceeding may be initiated in any court of this state with jurisdiction to determine child custody matters, by an individual:

(a) Filing a petition seeking a determination that he or she is a de facto custodian pursuant to section 32-1703, Idaho Code, and seeking custody of a child; or

(b) Filing a motion seeking permissive intervention pursuant to rule 24 of the Idaho rules of civil procedure, in a pending custody proceeding seeking a determination that he or she is a de facto custodian pursuant to section 32-1703, Idaho Code, and seeking custody of a child.

(2) A petition for custody or a motion to intervene based on the petitioners or intervenors alleged status as a de facto custodian, filed under this section, must state and allege:

(a) The name and address of the petitioner or intervenor and any prior or other name used by the petitioner or intervenor;

(b) The name of the respondent mother and father or guardian(s) and any prior or other name used by the respondent(s) and known to the petitioner or intervenor;

(c) The name and date of birth of each child for whom custody is sought;

(d) The relationship of the petitioner or intervenor to each child for whom custody is sought;

(e) The basis for jurisdiction asserted by the petitioner or intervenor;

(f) The current legal and physical custodial status of each child for whom custody is sought, whether a proceeding involving custody of the child, including a proceeding for an order or protection pursuant to section 39-6304, Idaho Code, is pending in a court in this state or elsewhere, and a list of all prior orders of custody, including temporary orders, if known to the petitioner or intervenor;

(g) Whether either parent is a member of the armed services, if known to the petitioner or intervenor;

(h) The length of time each child has resided with the petitioner or intervenor and the nature of the petitioners or intervenors role in caring for each child for whom custody is sought;

(i) The financial support provided by the petitioner or intervenor for each child for whom custody is sought;

(j) Whether physical and/or legal custody should be granted to and/or shared with the respondent(s); and

(k) The basis upon which the petitioner or intervenor is claiming that it is in the best interests of the child that the petitioner or intervenor have custody of the child.

(3) The petition or motion must be verified by the petitioner or intervenor.

(4) Written notice of a hearing on a petition or motion to intervene for custody of a child by a de facto custodian must be given to:

(a) The parent(s) of the child as defined in section 16-2002(11) and (12), Idaho Code; and

(b) The guardian or legal custodian, if any, of the child; and

(c) The child's tribe pursuant to federal law, if the child is an Indian child as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq.

(5) Written notice of a hearing on a petition for custody of a child by a de facto custodian must be given to the Idaho department of health and welfare if the petitioner has reason to believe that either parent receives public assistance, the petitioner receives public assistance on behalf of the child or either parent receives child support enforcement services from the Idaho department of health and welfare or applies for such public assistance or child support enforcement services after a petition under this section is filed. Notice to the Idaho department of health and welfare must include a copy of the petition.

(6) In an action for custody of a child by a de facto custodian, the parties must stipulate to, or the court must find, facts establishing by clear and convincing evidence that the petitioner or intervenor is a de facto custodian pursuant to the requirements of section 32-1703, Idaho Code, before the court considers whether custody with the de facto custodian is in the best interests of the child.

(7) Once a court has found facts supporting the qualification of the petitioner or intervenor as the de facto custodian of a child, the petitioner or intervenor must prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian. In determining the best interests of the child, the court shall apply the standards as provided in section 32-717(1), Idaho Code.

(8) In determining whether the petitioner or intervenor has established that it is in the best interests of the child to be in the custody of the de facto custodian, the court may also consider:

(a) The circumstances under which the child was allowed to remain in the care of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent to seek work or to attend school;

(b) Whether the child is currently residing with the de facto custodian and, if not, the length of time since the petitioner or intervenor last functioned as the child's de facto custodian.

History.
I.C., § 32-1704, as added by 2010, ch. 236, § 1, p. 609.

RESEARCH REFERENCES

A.L.R. — Construction and application by state courts of Indian Child Welfare Act of 1978 requirement of active efforts to provide remedial services, 25 U.S.C.A. § 1912(d). 61 A.L.R.6th 521.

Validity, construction, and application of placement preferences of state and federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

32-1705. Nature of de facto custodian order — Access to records — Termination of de facto custodianship. — (1) A court may enter an order granting a de facto custodian sole or joint legal and/or physical custody as defined in section 32-717B(1), (2) and (3), Idaho Code, in the same manner as it would grant such custody to a parent.

(2) An order granting custody to a de facto custodian is subject to the continuing jurisdiction of the court and is modifiable in the same manner as an order establishing parental custody pursuant to section 32-717, Idaho Code, or a similar provision.

(3) A de facto custodian who has been granted sole or joint legal custody of a child shall have access to records pertaining to the child who is the subject of the de facto custodianship to the same extent as a parent would have such access pursuant to an order of legal custody.

(4) Any party to the proceeding granting custody to a de facto custodian may move for the termination of the custody order. A de facto custodian may move for permission to resign as de facto custodian.

(a) A party moving for termination of the de facto custodian-child relationship must show by a preponderance of the evidence that termination of the relationship would be in the best interests of the child.

(b) A motion for termination or for resignation may, but need not, include a proposal for the continuing custody of the child.

(c) After notice and hearing on a motion for termination or resignation, the court may terminate the custody of the de facto custodian and may make any further orders that may be appropriate in the best interests of the child.

History.
I.C., § 32-1705, as added by 2010, ch. 236, § 1, p. 609.